TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960

No. 492

CIVIL AERONAUTICS BOARD, PETITIONER,

vs.

DELTA AIR LINES, INC.

No. 493

LAKE CENTRAL AIRLINES, INC., PETITIONER,

vs.

DELTA AIR LINES, INC.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 19, 1960

CERTIORARI GRANTED DECEMBER 12, 1960

SUPREME COURT OF THE UNITED STATES

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INDEX

[fol. a]

IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 25,422

EASTERN AIR LINES, INC., Petitioner,

vs.

CIVIL AERONAUTICS BOARD, Respondent,

DELTA AIR LINES, INC., NORTHWEST AIRLINES, INC., CAPITAL AIRLINES, INC., TRANS WORLD AIRLINES, INC., MICHIGAN DEPARTMENT OF AERONAUTICS, UNITED AIR LINES, INC., Intervenors.

No. 25,434

CAPITOL AIRWAYS, INC., Petitioner,

vs.

CIVIL AERONAUTICS BOARD, Respondent,

DELTA AIR LINES, INC., NORTHWEST AIRLINES, INC., EASTERN AIR LINES, INC., Intervenors.

No. 25,439

NATIONAL AIRLINES, INC., Petitioner,

vs.

CIVIL AERONAUTICS BOARD, Respondent,

DELTA AIR LINES, INC., EASTERN AIR LINES, INC., MICHIGAN DEPARTMENT OF AERONAUTICS, Intervenors.

No. 25,532

CITY OF NASHVILLE AND THE NASHVILLE CHAMBER OF COMMERCE, Petitioners,

vs.

CIVIL AERONAUTICS BOARD, Respondent.

On Petition for Review of Orders of the Civil Aeronautics Board

Joint Appendix

[fols. 1-78] BEFORE THE CIVIL AERONAUTICS BOARD

ORDER NO. E-9734—November 10, 1955

Adopted by the Civil Aeronautics Board at its office in Washington, D. C. on the 10th day of November, 1955

Docket No. 2396 et al.

In the matter of

EASTERN AIR LINES, INC., and other applicants for certificates or amendments to certificates of public convenience and necessity, known as the GREAT LAKES-SOUTHEAST SERVICE CASE.

There having been reached for hearing on the Board's Docket the application of Eastern Air Lines, Inc., in Docket No. 2396 which proposes several extensions and modifications of that carrier's routes Nos. 6 and 47 in the general area between Chicago, Ill., Detroit, Mich., and Buffalo, N. Y., on the one hand, and Atlanta, Ga., Jacksonville and Miami, Fla. on the other hand; and

Eastern having also moved that its proposal be heard in four separate but consecutive proceedings which would involve issues limited to particular services Eastern proposes to render in its over-all application; and

Motions having been filed by American Airlines, Inc., Delta Air Lines, Inc., Northwest Airlines, Inc., and Pied-[fol. 79] mont Aviation, Inc., for the dismissal of Eastern's application in Docket No. 2396 or, in the alternative, that the said application be returned to the Board's Docket Section and assigned a new docket number for hearing at a future date; and

The movants having assigned as grounds for their motions, *inter alia*, that Eastern's proposal at the time it was first noted for prehearing conference contemplated service limited for the most part to the Chicago-Washington area whereas Eastern immediately prior to the date of the prehearing conference filed an "Amendment No. 3" to its application which substantially enlarged the scope of

the issues previously present by bringing into issue a number of proposed new non-stop services involving such points as Indianapolis, Ind., Cincinnati, Ohio and Buffalo, N. Y., on the one hand, and Charlotte, N. C., Jacksonville and Miami, Fla., on the other; and

Capital Airlines, Inc., having orally moved for the consolidation of its application in Docket No. 6889 which proposes, among other things, an extension of that carrier's route No. 55 which would involve the question of service to and from points north or west of Chicago, such as Milwaukee and Minneapolis/St. Paul, on the grounds that there should be considered in this proceeding the entire question of new or additional service between all cities in the Great Lakes area and Florida; and

Capital having orally moved for the consolidation of its application in Docket No. 7142, which seeks an extension of that carrier's system operations to Toronto, Canada, on the grounds that inclusion of Toronto would not substantially expand the issues presently involved, and that the [fol. 80] question of service to Toronto is closely related to issues involving service between the Great Lakes area and Florida; and

A number of applications of a local service nature having been filed by Allegheny Airlines, Inc., Lake Central Airlines, Inc., Mohawk Airlines, Inc., North Central Airlines, Inc., Piedmont Aviation, Inc., and Riddle Airlines, Inc., which carriers request the consolidation of their respective proposals in this proceeding on the ground that much of Eastern's application in Docket No. 2396 would involve, in whole or in part, a substantial portion of the services now being rendered or proposed to be rendered by such applicants and which, if not heard in the consolidated proceeding, may well result in substantial diversion of revenues from the above named local service carriers; and

Eastern, as well as practically all of the other trunkline operators, oppose the consolidation of local service applications on the ground that such proposals involve an entirely different type of service from that sought to be rendered by the trunkline carriers; and

A number of additional applications having been filed by other carriers for which consolidation is requested in

whole or in part depending upon the scope of the area to be considered herein; and

Eastern having filed an opposition to the consolidation of any application which proposes new services not comparable to the new services proposed by Eastern; and

The said applicants oppose Eastern's concept of the scope of the proceeding on the ground that no carrier should be permitted to "custom-tailor" a case so that there would be in issue only the identical points involved in the lead [fol. 81] application and the said carriers urge that the issues should include the question of service to all cities within the particular area whether the area be a limited one or whether it be of a broad nature including the question of service between the Great Lakes and the Southeast; and

Motions having been submitted to obviate the issue of through service from points north or west of Chicago by prohibiting through schedules between said points and new cities proposed to be served within the area involved; and

Motions having also been submitted to prohibit a rehearing on proposals involving primarily east-west service between New York and Chicago such as were recently decided in the *New York-Chicago Service Case*, Docket No. 986, *et al.*, Order No. E-9537 (decided September 1, 1955); and

It appearing to the Board, that although Eastern's "Amendment No. 3" did enlarge to some extent the issues present at the time the application was reached on the Board's Docket for hearing the broadening of the proposal merely placed in issue, for the most part, questions relating to whether the public interest required various nonstop services in place of certain one-stop services which were inherent in Eastern's original proposal, and the additional question of service between points now served by Eastern, on the one hand, and Buffalo on the other, which would not justify the dismissal of Eastern's application or the re-assignment to it of a later docket number; and

It further appearing to the Board, after giving full consideration to the arguments advanced by the various

[fol. 82] parties, that certain applications proposing additional air transportation service in a broad area between the Great Lakes and the Southeast bounded by the cities of Chicago, Ill., Detroit, Mich., and Buffalo, N. Y., on the north and Indianapolis, Ind., Louisville, Ky., and Atlanta, Ga., on the west, Washington, D. C., and Baltimore Md. on the east and Tampa and Miami, Fla. on the south, can be advantageously and expeditiously determined in a single consolidated proceeding without any adverse effect upon the public interest and without prejudice to such further procedures with respect to each application as may be found necessary and appropriate; and

It further appearing that Eastern's suggestion with respect to divorcing its proposal into four parts for separate consecutive hearings thereon would not be feasible or practical in a consolidated proceeding involving a number of applications proposing similar but not identical services such as are proposed by Eastern; and

It further appearing that requests for the consolidation of applications involving service between cities in the above stated area, on the one hand, and Milwaukee and Minneapolis/St. Paul on the other, would unduly broaden the issues involved in the case; and

It further appearing that under the Board's generally established policy there should not be consolidated herein proposals contemplating service to foreign points such as Toronto, Canada; and

It further appearing that the consolidation of applications of a local service nature would not be in accord with the Board's policy of not co-mingling such proposals in a [fol. 83] proceeding predominantly involving long-haul services and that the interests of any local service carrier which might possibly be adversely effected may be adequately protected by granting such carrier leave to intervene and, in any event the parties will be entitled, as in all proceedings where there exists overlapping applications, to urge the mutual exclusivity of their respective proposals; and

It further appearing that in view of the large number of applications involving local service within the section of

the country generally known as the Great Lakes area the Board will direct that a hearing involving such proposals be set down promptly; and

It further appearing that the consolidation of issues involving nonstop service between cities outside of the area to be considered herein, on the one hand, and new cities proposed to be served within the area, on the other hand, would unduly broaden the case and render it unmanageable from a procedural standpoint; hence, any new authorizations resulting from the proceeding will carry a restriction prohibiting such nonstop service; and

It further appearing that the entire question of new or additional service, primarily of an east-west nature between New York and Chicago, was the subject of extensive hearings in the *New York-Chicago Service Case, supra*, decision on which was only recently reached by the Board, and that it would not be appropriate procedure or in the public interest to again take evidence at this time with respect to such proposals;

[fol. 84] It is Ordered:

1. That the motions of American, Delta, Northwest and Piedmont to dismiss Eastern's application in Docket No. 2396 or in the alternative to return said application to the Board's Docket Section for future hearing at a later date be denied;

2. That there be consolidated for hearing with Eastern's application in Docket No. 2396 all pending proposals involving service in the area extending from Chicago, Ill., Detroit, Mich., and Buffalo, N. Y., on the north, Indianapolis, Ind., Louisville, Ky., and Atlanta Ga., on the west, Washington, D. C. and Baltimore, Md., on the east and Miami and Tampa, Fla., on the south;

3. That the Chief Examiner set down for prompt hearing a proceeding involving local service applications in the general section known as Great Lakes area;

4. That the proposals of Capital Airlines, Inc., in Docket No. 6889, except the following portions thereof:

(a) extension of route No. 55 from Atlanta, Ga. to Miami, Fla., via Jacksonville, Tampa, and West Palm Beach, Fla.,

(b) extension of route No. 55 from Pittsburgh, Pa. to Detroit, Mich., via Youngstown, Akron, Cleveland, and Toledo, Ohio,

(c) extension of route No. 55 from Pittsburgh, Pa. to Buffalo, N. Y., via Erie, Pa.,

(d) a new segment of route No. 14 beyond Pittsburgh, Pa. to Chicago, Ill., via Charleston, W. Va., Cincinnati, Ohio, and Indianapolis, Ind.,

[fol. 85] (e) a new segment of route No. 14 beyond Pittsburgh, Pa. to Chicago, Ill., via Columbus, Dayton, Ohio; Fort Wayne and South Bend, Ind. be severed and assigned Docket No. 7493.

5. That the application of Delta Air Lines, Inc., in Docket No. 6995, except the following parts thereof which seeks, subject to a restriction prohibiting service to both Cleveland, Ohio, and Pittsburgh, Pa. on the same flight:

(a) amendment of route No. 8 from the present intermediate point Indianapolis, Ind., via Cincinnati, Dayton, and Columbus, Ohio, Pittsburgh, Pa., Youngstown and Cleveland, Ohio, Erie, Pa., to Buffalo, N. Y., and

(b) amendment of route No. 54 by the addition of Louisville, Ky. as an intermediate point between Lexington, Ky., and Cincinnati, Ohio; and the addition of Indianapolis, Ind. as an intermediate point between Cincinnati, Ohio, and Chicago, Ill.; and

(c) amendment of Route No. 54 so as to extend said route from the present intermediate point Cincinnati, Ohio, to Detroit, Mich., via Columbus and Cleveland, Ohio, be severed and assigned Docket No. 7494.

6. That the proposals of Delta Air Lines, Inc., in Docket No. 7224, as follows:

(a) that portion which proposes service beyond Detroit, Mich., Milwaukee, Wis., Rochester, Minn. and the terminal point Minneapolis/St. Paul, Minn.

(b) that portion which proposes service beyond Detroit, Mich., Milwaukee, Wis., Rochester, Minn. and the terminal point Minneapolis/St. Paul, Minn. and

[fol. 86] (c) that portion which proposes service beyond Detroit, Mich., Milwaukee, Wis., Rochester, Minn. and the

terminal point Minneapolis/St. Paul, Minn. be severed and assigned Docket No. 7495.

7. That the proposals of Delta Air Lines, Inc., in Docket No. 7225, as follows:

(a) inclusion of Birmingham as an intermediate point between Atlanta, Ga. and Chattanooga, Tenn. and

(b) inclusion of Nashville as an intermediate point between Knoxville and Lexington be severed and assigned Docket No. 7496.

8. That the proposals of Delta Air Lines, Inc., in Docket No. 7270, except that portion which seeks a new segment of route No. 54 as follows: beyond the intermediate point Cincinnati, Ohio, via Dayton, Columbus, Ohio, Pittsburgh, Pa., Youngstown, Cleveland, Ohio, Erie, Pa. to Buffalo, N. Y. be severed and assigned Docket No. 7497.

9. That the proposals of Delta Air Lines, Inc., in Docket No. 7271, except that portion which seeks an amendment of route No. 54 so as to provide service beyond Atlanta, Ga. to Detroit, Mich., via Pittsburgh, Pa. and Cleveland, Ohio, be severed and assigned Docket No. 7498.

10. That the proposals of Eastern Air Lines, Inc., in Docket No. 7286, except that portion thereof which seeks an amendment of route No. 10 by adding a new segment from the intermediate point Louisville, Ky. to the terminal point Buffalo, N. Y., via Cincinnati, Dayton, Columbus, and Toledo, Ohio, and Detroit, Mich., be severed and assigned Docket No. 7499.

[fol. 87] 11. That those portions of the application of Eastern Air Lines, Inc., in Docket No. 7287 which seeks an amendment of route No. 10 so as to provide service:

(a) beyond Pittsburgh, Pa. to New York, N. Y./Newark, N. J., and

(b) between Detroit, Mich., Milwaukee, Wis., and Minneapolis/St. Paul, Minn. be severed and assigned Docket No. 7500.

12. That that portion of the application of Eastern Air Lines, Inc., in Docket No. 7288, which seeks a new certificate or amendment of one or more existing certificates so as to provide service between New York, N. Y./Newark, N. J.,

and Pittsburgh, Pa., be severed and assigned Docket No. 7501.

13. That those portions of the application of Eastern Air Lines, Inc., in Docket No. 7289, which seek a new certificate or amendment of one or more existing certificates so as to authorize service between:

(a) New Orleans, La. and Louisville, Ky., via Jackson, Miss., Memphis and Nashville, Tenn., and Evansville, Ind., and

(b) Houston, Tex. and Louisville, Ky., via Beaumont-Port Arthur, Tex., Shreveport, La., Little Rock, Ark., Memphis and Nashville, Tenn., and Evansville, Ind., be severed and assigned Docket No. 7502.

14. That those portions of the application of Eastern Air Lines, Inc., in Docket No. 7290, which seek a new certificate or amendment of one or more existing certificates so as to authorize service between,

[fol. 88] (a) Atlanta Ga. and Lexington/Frankfort, Ky., via Birmingham, Ala., Chattanooga, Knoxville, and Nashville, Tenn., and

(b) Spartanburg, S. C., and Lexington/Frankfort, Ky., via Knoxville and Nashville, Tenn., and

(c) Detroit, Mich. and Minneapolis/St. Paul, Minn., via Milwaukee, Wis. and Rochester, Minn., be severed and assigned Docket No. 7503.

15. That that portion of the application of Eastern Air Lines, Inc., in Docket No. 7291, which seeks an amendment of route No. 10 so as to add a new segment extending from Birmingham, Ala. to San Antonio, Tex., via Montgomery and Mobile, Ala., New Orleans, La., and Houston, Tex., be severed and assigned Docket No. 7504.

16. That that portion of the application of Eastern Air Lines, Inc., in Docket No. 7292, which seeks an amendment of route No. 6 so as to provide service between Chicago, Ill. and Seattle, Wash., via Milwaukee and Madison, Wisconsin, Rochester and Minneapolis/St. Paul, Minn., Billings, Mont., Spokane, Wash., and Portland, Ore., be severed and assigned Docket No. 7505.

17. That that portion of the application of National Air-

lines, Inc., in Docket No. 7296, which seeks an amendment of route No. 31 so as to provide service between:

(a) Chicago, Ill., and Minneapolis/St. Paul, Minn., via Milwaukee, Wis., and

(b) Detroit, Mich., and Minneapolis/St. Paul, Minn., via Milwaukee, Wis., be severed and assigned Docket No. 7506. [fol. 89] 18. That that portion of the application of National Airlines, Inc., in Docket No. 7297, which seeks authority to operate service between Buffalo, N. Y. and Toronto, Ontario, Can. be severed and assigned Docket No. 7507.

19. That that portion of the application of North American Airlines, Inc., in Docket No. 7264, which seeks to provide service between Louisville, Ky., and St. Louis, Mo. be severed and assigned Docket No. 7508.

20. That that portion of the application of Northwest Airlines, Inc., in Docket No. 7241, which seeks to provide service between Pittsburgh, Pa., and New York, N. Y./Newark, N. J., be severed and assigned Docket No. 7509.

21. That the following applications be and they are hereby consolidated in the one proceeding and assigned for hearing at a time and place to be hereafter designated before an examiner of the Board: Eastern Air Lines, Inc., Docket Nos. 2396, 7286, 7287, 7288, 7289, 7290, 7291, and 7292; American Airlines, Inc., Docket No. 6827; Capital Airlines, Inc., Docket Nos. 6889 and 7266; Delta Air Lines, Inc., Docket Nos. 6995, 7223, 7224, 7225, 7270, 7271, and 7298; National Airlines, Inc., Docket Nos. 6994, 7296 and 7297; North American Airlines, Inc., Docket Nos. 6063 and 7264; Northwest Airlines, Inc., Docket Nos. 6118, 7210, 7211, 7239, 7241 and 7242; Riddle Airlines, Inc., Docket No. 7258; Trans World Airlines, Inc., Docket Nos. 7209 and 7268; United Air Lines, Inc., Docket Nos. 7220, 7221, 7222, and 7269.

22. That any new authorizations issued as a result of this proceeding shall prohibit the operation of nonstop [fols. 90-1312] service between points outside of the area and new points to be served within the area specifically designated herein.

23. That any applicants desiring consolidation of applications, or portions thereof, which are presently on file

or which may be filed shall make such request by motion not later than ten days from the date hereof.

24. That except to the extent granted herein all motions with respect to the proceeding are hereby denied.

By the Civil Aeronautics Board:

/s/ M. C. Mulligan, Secretary. [Seal.]

[fol. 1313] BEFORE THE CIVIL AERONAUTICS BOARD

BOARD'S DECISION AND ORDERS E-13024—September 30, 1958

GREAT LAKES-SOUTHEAST SERVICE CASE

Docket No. 2396 et al.

Decided: September 30, 1958

Northwest Airlines' route No. 3 extended from Chicago to Miami via Atalanta and Tampa-St. Petersburg-Clearwater, subject to restriction prohibiting turnaround service on segment between Atlanta and Florida.

Past high load factors, difficulties in obtaining space and the size and potential of the Chicago-Miami market indicate that authorization of a third carrier is required by the public convenience and necessity. Competitive service between Tampa and Chicago is required, and addition of Atlanta will add support to the route. Indianapolis and Louisville added to Delta's route No. 54 rather than to new Chicago-Miami route so as to provide greater improvements in service and to even out the competitive relationship between Delta and Eastern in the Great Lakes-Southeast markets. Also, found that Tampa-St. Petersburg-Clearwater, Orlando and West Palm Beach should be added to Delta's route No. 54. Knoxville, Jacksonville and Tallahassee not included on Chicago-Miami route, since no need found for additional competitive service to these points.

The traveling public will be benefitted by authorization of a competitive Chicago-Miami carrier without adverse [fol. 1314] effect on presently authorized carriers. Lower

load factors of authorized carriers in a market do not, *per se*, bar authorization of a competitive carrier and needed route extensions should not be denied merely because carriers are in a period of depressed earnings. Delta and Eastern motions to reopen record on these grounds denied.

Northwest selected over National or other carriers to operate Chicago-Miami route because it can provide most public benefits. Northwest can provide greater beyond-terminal benefits and the route will integrate well seasonally with Northwest's present system. Northwest also has an important historic interest in the traffic over the route. National's need for route strengthening and other arguments favoring its selection are out-weighed by these factors in favor of selection of Northwest. Applications of TWA and United denied because the beyond-terminal traffic benefits they could provide are offered by the TWA St. Louis-Southeast extension in the *St. Louis-Southeast Service Case*. Also by selecting Northwest, one of the smaller trunks is strengthened. Capitol Airways coach proposal between Chicago/Detroit-Miami denied because need found for both coach and first-class services. Northwest and Delta found better qualified to provide needed competitive service. An experimental authorization of Capitol Airways in addition to Northwest and Delta would adversely affect the other new route authorizations granted.

Delta Air Lines' route No. 54 extended from Cincinnati to Detroit via Dayton, Columbus and Toledo, subject to long-haul restrictions. Extension of Delta's route will [fol. 1315] provide needed competitive service between Detroit area and Florida.

Capital Airlines' route No. 51 extended from Pittsburgh to Buffalo via Youngstown, Akron-Canton, Cleveland and Erie, and from Atlanta to Miami via Jacksonville, Tampa-St. Petersburg-Clearwater and West Palm Beach, subject to long-haul and turnaround restrctions. Capital route will provide required single-carrier service between Buffalo and Miami and new competitive service between Cleveland and Pittsburgh and Florida. Capital selected over National or other carriers because of greater historic interest in traffic over the route, greater beyond-terminal benefits and serious adverse impact on Capital of selecting another carrier. Capital's fitness for new route award not successfully chal-

lenged. Capital's financial position is improving and the carrier has markedly increased operations in recent periods. As a trunk carrier operating a major route system, there can be little question of its legal fitness to receive a new route award.

Eastern Air Lines' route No. 6 extended from Charleston, W. Va., to Chicago via Cincinnati, subject to long-haul restriction, and Raleigh-Durham added as intermediate point on Chicago and Detroit leg of route No. 6, subject to long-haul restriction. New route will offer direct Chicago service to Carolina area cities and provide Cincinnati with competitive service to the Southeast. Long-haul restrictions imposed to minimize diversion from Piedmont Aviation in intermediate markets. No need found to authorize Eastern route No. 10 extension from Louisville to Detroit. Needs of cities on proposed extension adequately provided for by other authorizations herein.

[fol. 1316] Charleston, S. C.-Savannah gap in Delta's route No. 54 closed. Extension will permit service to both points on the same flight and will result in an improvement of service to Charleston, S. C.

Presently authorized Chicago-Washington services found ample; therefore, no need found for new routes or for removal of long-haul restrictions on TWA and United Chicago-Washington nonstop flights.

United Air Lines' route No. 1 amended by adding a new segment between Chicago, Columbus, Dayton, Washington and Baltimore, subject to long-haul restrictions. The new segment provides needed competitive service for Columbus and Dayton. Selection of United to provide the service will give the Ohio cities important beyond-terminal single-carrier benefits.

Trans World Airlines' route No. 2 amended by eliminating prohibition against Indianapolis-Cincinnati nonstop service, but made subject to long-haul restriction. Removal of restriction will promote schedule flexibility.

Northwest Airlines' route No. 3 restrictions amended to permit unrestricted operations between Detroit, Cleveland, Pittsburgh, Washington and Baltimore. Baltimore added as a terminal point on the route. Removal of present restrictions will permit needed improvements in serv-

ice to the cities involved, without adverse competitive impact on Capital.

All new authorizations granted subject to restrictions necessary to protect local service carriers in local markets and to insure provision of long-haul services by the newly authorized trunk carriers.

[fol. 1317] APPEARANCES:

Same as in the Initial Decision, and in addition the following:

Lawrence L. Stentzel for Allegheny Airlines, Inc.

Charles R. Cutler for Mohawk Airlines, Inc.

R. J. Shortlidge, Jr. for Southern Airways, Inc.

Hugh Davison for the Bradenton, Fla., Chamber of Commerce.

Carl G. Maundrell for the Buffalo, N. Y. Chamber of Commerce.

R. O. Horn for the City and Chamber of Commerce of Cleveland, Ohio.

Francis Bolton for the City of Columbus, Ohio.

George Kiba for the Greater Detroit, Michigan Board of Commerce.

Harry Gonzales for the Jacksonville, Fla. Chamber of Commerce.

Allen J. Robertson for the Lee County, Fla. Chamber of Commerce.

C. Ray Smith for Pinellas County and the St. Petersburg and Clearwater, Fla. Chamber of Commerce.

William F. Chase for the Pittsburgh, Pa. Chamber of Commerce.

Todd Swalm and Fred MacDonald for the Sarasota, Fla. Chamber of Commerce.

Gregory T. Marquez for the West Palm Beach, Fla. Chamber of Commerce.

[fol. 1318] James D. Ramsey and Robert G. Howlett for the Michigan Department of Aeronautics.

Max M. Kampelman for the Minnesota Department of Aeronautics.

Henry Loble for the Montana Aeronautics Commission.

Harold G. Vavra for the North Dakota Aeronautics Commission.

D. L. Landsen for the Tennessee Aeronautics Commission.

Edward F. McKee for the West Virginia State Aeronautics Commission, and with William F. Keefer for the County of Ohio Board of Commissioners and the Ohio Valley Board of Trade, Inc.

John H. Bowers for the State of Wisconsin and the Milwaukee Association of Commerce.

OPINION

By the Board:

This consolidated proceeding involves proposals for new air service within the general areas between Florida, on the one hand, and Chicago, Detroit and Buffalo, on the other hand, and between Chicago and Washington, D. C. After due notice, a public hearing was held before Examiner William F. Cusick, who has issued an extensive Initial Decision. Exceptions to the Initial Decision and briefs to the Board have been filed. The Board has heard oral argument and the case stands submitted for decision.

Upon consideration of the entire record, we find that we are in agreement to a large extent with the Examiner's [fol. 1319] conclusions. Thus, we are in agreement with the following route modifications recommended by the Examiner: (a) extension of route No. 54 of Delta Air Lines, Inc. (Delta), from Cincinnati to Detroit via Dayton, Columbus, and Toledo [1] and the addition of Tampa-St. Petersburg-Clearwater and Orlando as intermediate points on route No. 54 between Miami and Jacksonville; (b) extension

[1] The Examiner recommended a restriction prohibiting turnaround service between Cincinnati and Detroit.

of route No. 51 of Capital Airlines, Inc. (Capital), from Pittsburgh to Buffalo via Youngstown, Akron-Canton, Cleveland and Erie and the extension of route No. 51 from Atlanta to Miami via Jacksonville, Tampa-St. Petersburg-Clearwater and West Palm Beach;[2] (c) extension of route No. 6 of Eastern Air Lines, Inc. (Eastern), from Charleston, W. Va., to Chicago via Cincinnati;[3] (d) extension of Delta's route No. 54 between Savannah and Charleston, S. C.; (e) amendment of route No. 1 of United Air Lines, Inc. (United) to authorize service between Chicago and Washington via Dayton and Columbus; (f) elimination of the restriction prohibiting nonstop service between Cincinnati and Indianapolis on TWA's route No. 2 and (g) authorization of unrestricted operations between Detroit, Cleveland, Pittsburgh and the co-terminals Washington and Baltimore on route No. 3 of Northwest Airlines, Inc. (Northwest).

[fol. 4320] We are not following certain of the other route modifications recommended by the Examiner. He recommended certification of National Airlines, Inc. (National), to operate between Chicago and Miami via Indianapolis, Louisville, Knoxville, Atlanta, Tallahassee, and Tampa-St. Petersburg-Clearwater. We believe a somewhat different route pattern in this area is required. We will extend Northwest's route No. 3 from Chicago to Miami via Atlanta and Tampa-St. Petersburg-Clearwater and will add Indianapolis and Louisville as intermediate points on Delta's route No. 54. Also, we do not believe the recommended extension of Eastern's route No. 10 from Louisville to Detroit via Cincinnati and Fort Wayne, or the removal of the long-haul restrictions on the Chicago-Washington services of TWA and United are required. We are also

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[2] The Examiner recommended restrictions prohibiting operations between Erie and Cleveland except on flights serving Atlanta or Miami, turnaround service between Atlanta and Miami, and single-plane service between points on route No. 51 between Atlanta and Washington/Baltimore, on the one hand, and the new Florida points, on the other.

[3] The Examiner recommended a restriction requiring flights serving Charleston, W. Va., and Chicago to originate or terminate at Columbia, S. C., or a point south thereof.

imposing certain restrictions on the new authorizations in addition to those recommended by the Examiner. Accordingly, except as modified herein, we adopt as our own the findings and conclusions of the Examiner in his Initial Decision which is attached hereto as an Appendix.

I

Turning first to the Chicago-Miami market, we fully agree with the Examiner's conclusion that authorization of a third carrier is required. The shortcomings of the existing services, as detailed by the Examiner, underscore the service improvements that can be anticipated from adding another carrier to the route. We are convinced that the traffic is sufficiently large now and has the inherent potential to support another carrier in addition to Delta and Eastern. The Chicago-Miami market is by [fol. 1321] far the largest two carrier market in the country[4] and has shown an impressive continuing growth:

Chicago-Miami Passengers[5]

1953	1954	1955	1956	1957
180,817	205,335	283,452	304,837	313,001

[4] Top one- and two-carrier markets as shown in the September 1956 and March 1957 *Competition Among Domestic Air Carriers* reports are as follows:

City Pair	Number of Passengers	Number of Passenger Miles (000)	Number of Carriers
Chicago-Miami	29,457	34,936	2
San Francisco-Seattle	13,300	9,137	2
Dallas-New Orleans	13,319	5,820	2
Dallas-Los Angeles	12,560	15,637	1

The Chicago-Miami market is also larger than other major long-haul Chicago markets served by three or more carriers:

City Pair	Number of Passengers	Number of Passenger Miles (000)
Chicago-Los Angeles	24,180	42,340
-Washington	20,413	12,248
-San Francisco	16,867	31,306
-Philadelphia	12,708	8,527

[5] March and September O&D Surveys × 13.

The indications in the record of the marked increase in the population of Miami, the continuing development of Florida as a vacation center, and the many new industries settling in Florida, all point to an increasing future demand for Chicago-Miami service.

The size and growth in traffic between Chicago and Atlanta and Tampa-St. Petersburg-Clearwater also indicates that these points should logically be included as intermediates on the new route. In particular, Tampa/St. Petersburg-Chicago is among the largest monopoly markets in the country, and clearly warrants the develop- [fol. 1322] mental benefits of competitive service. Tampa-St. Petersburg's recent traffic growth is as follows:

Tampa/St. Petersburg-Chicago Passengers[6]

1953	1954	1955	1956	1957
31,629	45,565	56,264	72,215	74,464

The population of the Tampa-St. Petersburg area has increased over 60% since 1945 and business and industrial activity has shown marked growth. And the Tampa-St. Petersburg area is second only to Miami in number of tourists attracted to Florida. We fully agree with the Examiner's finding of a need for competitive Tampa/St. Petersburg-Chicago service.

We also believe Atlanta should be included on the Chicago-Miami route. The market involved is substantial:

Atlanta-Chicago Passengers[7]

1953	1954	1955	1956	1957
37,323	39,130	46,956	50,466	52,767

A market of the size of the Chicago-Atlanta traffic with a demonstrated trend of growth can, in our opinion, support the services of an additional competitive carrier. Although there does not appear to be a substantial need for added Atlanta-Florida service, the size of the Chicago-Atlanta market and the important support Atlanta will add to the Chicago-Miami route warrant Atlanta's inclusion as an intermediate point on the new route.

[fol. 1323] As noted above, the Examiner would include

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[6] March and September O&D Surveys × 13.

[7] March and September O&D Surveys × 13.

Indianapolis and Louisville on his proposed new Chicago-Miami route. We agree that Indianapolis and Louisville require competitive service to the Southeast, but believe they should be added to Delta's route No. 54 rather than to the new Chicago-Miami route. Delta is already Eastern's primary competitor in the Great Lakes-Southeast area, and our action in adding Louisville and Indianapolis to Delta's route will merely extend that relationship to two additional points within Delta's general area of operations.

The addition of Indianapolis and Louisville to route No. 54 integrates well with Delta's present services. Delta now serves Indianapolis on its Detroit-New Orleans route No. 8. It will now be able to expand and develop the various services it can provide to Indianapolis from points on both routes Nos. 8 and 54. And as to Louisville, by adding the point to Delta's route, we can satisfy its needs for competitive service to Florida and the Southeast *and* its needs for competitive service to Detroit via the Cincinnati-Detroit extension of route No. 54. Thus, by including Louisville on Delta's route rather than on the new Chicago-Miami route, we are providing the city with more of the improved services it seeks by a carrier identified with and already operating in the area.

As part of our efforts to make Delta and Eastern more fully competitive in the major markets in the Chicago-Detroit-Miami area, we are also adding Tampa-St. Petersburg-Clearwater to Delta's route. As indicated above, Chicago-Tampa is one of the largest monopoly markets in the country, and can, in our opinion, support multi-carrier service. This addition will also afford first com-[fol. 1324] petitive service in the Detroit-Tampa market. We believe all the various carrier routes to Florida must include Tampa, which is next to Miami in importance as a vacation spot.[8] With the over-all development of Florida

[8] The issue of adding Tampa as an intermediate point on Delta's route No. 54 was deferred in the *New York-Florida Case, Docket* No. 3051 *et al.*, Order No. E-10884, December 21, 1956, for contemporaneous consideration with the Tampa-Great Lakes applications heard in the present proceeding. Since Tampa is being added to route No. 54 herein, the *New York-Florida Case* may now be terminated.

travel, we are satisfied that such a full pattern of competitive service is justified.[9]

We disagree with the Examiner's conclusion that Jacksonville should be included on the new Chicago-Miami route. Jacksonville's traffic from the Great Lakes area cities is considerably less than that generated to the vacation spots of Tampa and Miami, and is adequately served at present by Delta and Eastern. Since the point is more of a business center than a vacation spot, we do not believe third carrier competition is required to meet its air service needs.[10]

[fol. 1325] Nor do we believe Knoxville's traffic to Chicago and Florida warrants authorization of competitive service at the present time. In 1957, Knoxville generated only about 32 passengers a day to Chicago and about 12 passengers a day to Florida. Our action herein does, however, make valuable new services available to Knoxville over Delta's route No. 54 to Detroit, Indianapolis, Louisville and Tampa. Knoxville will now have a single-carrier service to these important cities. We note that Delta's services at Knoxville leave much to be desired in the way of limited-stop service with large aircraft to certain of the major

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[9] We are also adding West Palm Beach as an intermediate point on Delta's route No. 54 to complement the carrier's pattern of service to the major Florida vacation spots. Although West Palm Beach is not as important a traffic point as Miami or Tampa, the authorization of a stop at West Palm Beach will convenience a significant number of passengers (over 11,000 passengers moved between West Palm Beach and Chicago-Detroit in 1957), and will afford competitive service to such points as Chicago, Detroit, Cincinnati and Louisville, points which are or will be served by Eastern. We believe the traffic growth which may be expected to accompany West Palm Beach's continuing development as a tourist, business and light manufacturing center fully warrants competitive service to the Great Lakes cities made possible by its addition to Delta's route.

[10] We are, however, adding Jacksonville to the Capital route No. 51 extension so as to provide first one-carrier service to Buffalo and first competitive service for such important points as Cleveland and Pittsburgh.

cities on route No. 54. With the traffic support of other new cities on its system, Delta will be expected to remedy this situation on its own initiative to the extent that Knoxville's traffic showing is a reflection of the limited service available to it.

We also find that Tallahassee's traffic does not warrant its inclusion on the new direct Chicago-Florida route. The point generated only 5 passengers per day to Chicago in 1957, and adequate service for this traffic is available through the Atlanta gateway. Both National and Eastern serve Tallahassee to other Florida points. We conclude that an additional authorization at Tallahassee is not required.

In the light of the foregoing, we will authorize a third Chicago-Miami route with only Atlanta and Tampa-St. Petersburg-Clearwater as intermediate points. The new route involves one of the major long-haul flows of traffic in the country. Traffic between the points on the new route and Chicago alone amounted to over 440,000 passengers in 1957. With the demonstrated need for new service over this route, as detailed by the Examiner, and with [fol. 1326] a market of this volume, we have little doubt but that the third carrier can provide the needed services on an economic basis. The markets involved have been demonstrated as growing every year and, with the spur of competitive service, that growth, which reflects the expanding Florida economy, can be expected to continue.

Delta and Eastern have pointed out the sizeable revenues they derive from the markets which will be served by the new route, and express their concern over diversion if a third carrier is authorized. Delta estimates the third carrier would actually divert over $2.85 million based on its 1956 revenues from Chicago-Atlanta-Miami traffic. Adjusting Eastern's own diversion estimate to conform to the Chicago-Miami route we are authorizing, produces an Eastern estimate of $7.4 million in diversion. The carriers cite this estimated diversion as an important reason for not certificating a third Chicago-Miami carrier.

We have consistently given full consideration to possible diversion from carriers authorized to serve a particular market before granting competitive applications, and have considered the probable diversion from Delta and Eastern

to result from authorization of a third Chicago-Miami carrier. However, we have concluded that the route is rich enough to support three carriers. The diversionary impact on an existing carrier must seriously affect its financial position before it could justify withholding authorization of needed competitive service, and Delta and Eastern have not shown they would suffer such an effect. The arguments that their revenues will be reduced and their declining earnings position aggravated do not persuade us to alter our decision. Eastern has been able to maintain a good earnings position despite the certification [fol. 1327] of major competitive routes; and any traffic diversion which Delta may suffer is offset by the important new sources of traffic opened up to it by our decision herein. Eastern is also receiving the important extension of route No. 6 to Cincinnati and Chicago.

Moreover, on its face Eastern's diversion estimate is substantially overstated, since it assumes that the third carrier would cary one-third of the traffic over the route. This participation factor is unrealistic in the face of Eastern's identity and entrenched position of the Chicago-Miami route markets. The fact that Eastern carries well over 50% of the Chicago-Miami traffic in competition with Delta supports this conclusion. We believe Northwest cannot be expected for some time to achieve more than a 20% participation. *Cf. Southwest-Northeast Service Case.*[11] Although some of the carriers' Chicago-Florida traffic will be diverted, we are convinced the growth in the Florida traffic market will substantially offset the traffic diverted to Northwest. We are unable to conclude that the award of the new route will so adversely affect Eastern as to justify denying the traveling public the benefits to be derived from the third carrier's Chicago-Florida service.

We turn next to the matter of selection of carrier. We believe the public interest will be best served by selecting Northwest to operate the new route which we have found required. In his Initial Decision, the Examiner selected National to serve the new Chicago-Florida route he recommended. He narrowed the choice of carriers to National and Northwest, and in making his choice relied heavily

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[11] Order E-9758, Nov. 21, 1955,

on National's "need for strengthening". We agree with the Examiner that the choice to be made is basically be- [fol. 1328] tween National and Northwest; but we select Northwest because of the greater public benefits that it can offer.

Since neither Northwest nor National ranks among the stronger trunk carriers, our policy which has favored strengthening the systems of smaller trunks to provide required new services, is a factor which both applicants can claim in their favor. We agree with the Examiner that National's route system could well be strengthened, but the same is equally true of Northwest. Likewise, we are convinced that either National or Northwest could adequately service the Chicago-Miami route. However, Northwest has an important advantage in its favor in that it could provide important additional single-plane and single-carrier services which National could not provide. National would be forced to rely on the traffic generated over the new segment alone in support of its operations,[12] whereas Northwest will have the benefit of beyond-Chicago traffic support from such points as Milwaukee, Twin Cities and Seattle. According to the 1957 Surveys, over 49,000 annual passengers moved between Miami and points on Northwest's system beyond Chicago. For the same period, there were over 15,600 Tampa-St. Petersburg and over 12,500 Atlanta passengers to points beyond Chicago on Northwest's system.[13] And Northwest

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[12] Little additional strength would be added by awarding the route as an extension of National's route No. 31 to the north from Jacksonville. Only the relatively limited traffic from the smaller cities National now serves in Florida such as Daytona Beach, Ft. Myers, and Sarasota, would be involved.

[13] The fact that issues involving direct nonstop service between Florida and southeastern points, on the one hand, and Milwaukee and the Twin Cities, on the other, are presented in the *Chicago-Milwaukee-Twin Cities Case*, Docket No. 3207 *et al.*, does not preclude our consideration of the beyond-segment benefits Northwest could provide if awarded a Chicago-Miami route. Looking only at traffic west of the Twin Cities, the extension of Northwest

[fol. 1329] has proposed single-plane service for all but an insignificant portion of this 77,000 passenger total. By the selection of Northwest, these passengers wil be afforded the benefits of single-carrier and single-plane service. Northwest has proposed one-plane service to Miami from such points as Milwaukee, Madison, Rochester, Twin Cities, Fargo, Grand Forks, Winnipeg, Great Falls, Billings, Spokane, Portland and Seattle. Twenty-one domestic cities west of Chicago would receive new one-carrier service to Miami. Northwest has operated a Miami interchange with Eastern from the Twin Cities; but all the other cities north of Chicago will be receiving their first single-carrier service. And as we have had occasion to note in other cases, single-carrier service is superior to interchange service in a number of respects, especially greater flexibility in scheduling and in adding additional flights. No comparable advantage to the traveling public would result from the selection of National.[14]

Another consideration pointing to Northwest's selection is the seasonal integration of the new Florida route with Northwest's present system. The winter months are peak Florida travel months, whereas Northwest suffers a marked wintertime slump in traffic over its present northerly east-west route system. Thus, with less additional over-all capital commitment than would be required of National, [fol. 1330] Northwest will be able to divert its aircraft from its northerly east-west operations to the Florida run, since the winter increase in Florida traffic complements a decline in its wintertime east-west traffic. If National were selected to operate the route, its present high degree of seasonality over the east coast New York-Miami route

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would have convenienced almost 14,000 passengers to Miami, Tampa-St. Petersburg and Atlanta in 1957. National could provide no comparable beyond-segment benefits.

[14] Also, Northwest has a greater historic interest in the traffic which will move over the new route than does National. Northwest has sold a substantial volume of Florida travel from its various system points for movement through Chicago and has operated a Twin Cities-Miami interchange service with Eastern since 1954.

would be further aggravated by a coincident peaking of the Chicago-Miami traffic.

We agree with the Examiner that Northwest's claims for selection are also superior to those of TWA and United; however, we do not fully agree with the basis on which he denied their applications. The Examiner concluded that the beyond area traffic benefits which TWA and United could provide for West Coast traffic to Florida were outweighed by the adverse effect the selection of TWA or United would have on the presently operated interchanges between Florida and Atlanta on the West Coast. However, we have previously noted the superiority of single-carrier, single-plane service to interchange service, and we therefore do not regard protection of an interchange as an imperative consideration in either the certification of a needed new route or selection of carrier to prove needed new services. We have considered the beyond area benefits claimed by TWA and United and have selected TWA to provide a St. Louis-Florida service in the *St. Louis-Southeast Service Case*, decided concurrently herewith, in part because of these beyond area benefits.[15] Grant of the St. Louis-Miami route to TWA disposes of this factor as an important consideration in [fol. 1331] the present case. Furthermore, as between Northwest and the two Big Four applicants—TWA and United, Northwest is to be favored because of the strength the route will add to its system.

Capitol Airways has proposed a novel 4 cents per mile fare coach service between Chicago and Miami and Detroit and Miami.[16] We have considerable doubt that Capi-

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[15] We agree with the Examiner that the circuity of a TWA or United service from their West Coast cities to Florida via a required stop at Chicago would detract from the quality of the through service they could provide.

[16] Capitol proposes Chicago-Miami service via Indianapolis, Louisville, Chattanooga, Atlanta and Tampa-St. Petersburg. The carrier proposes a Detroit-Miami route via Toledo, Cleveland, Dayton, Cincinnati, Louisville and the other intermediate points to the south as named on the Chicago-Miami route.

tol could economically provide a coach service of the type it proposes; but in any event, we believe that the factors pointing to the selection of Northwest in the Chicago-Miami market and Delta in the Detroit-Miami market require their selection. Our findings of a need for additional service in these markets is based on both first class and coach service needs which Northwest and Delta can provide. Also, Northwest and Delta, with their greater over-all economic strength and operating experience, will be in a better position to fully compete with the established carriers in these markets. Delta and Northwest are also in a superior position to put larger and newer aircraft into these new services than is Capitol. We have even considered an experimental authorization of Capitol's service, in addition to the other new services we are authorizing, but we are unable to find that the advantages of such an experiment outweigh the competitive impact on the other new services we are authorizing. For example, we do not believe the Chicago-Miami traffic, the largest market under consideration, could now support a fourth, albeit special and experimental, service without [fol. 1332] substantial adverse impact on the other competing carriers. Accordingly, Capitol's application will be denied.

We now turn to the motions of Delta and Eastern requesting that the record in this proceeding be reopened. Delta and Eastern have sought to show by submission of data covering their more recent operating experience, that the Chicago-Miami market cannot sustain a third carrier, that traffic and load factors on recent flights have dropped, and that the two presently certificated carriers would be seriously harmed by authorization of a third carrier. Similar contentions were advanced in connection with the certifiation of a third carrier in the New York-Miami market, but were not persuasive there, and are not here. We have reviewed the recent traffic and service data available from regularly filed carrier reports and schedules, and are satisfied that the most recent experience on the Chicago-Florida route does not alter the validity of the Examiner's finding of a need for a third Chicago-Miami

carrier or indicate that reopening the record is necessary.[17]

Delta and Eastern contend that their services are more than adequate to accommodate the available Chicago-[fol. 1333] Florida traffic. However, we agree with the Examiner that the heavy winter season load factors experienced by Delta and Eastern and the record evidence of the difficulties experienced in obtaining space to Florida in the past indicate that this has not been the case. Even though the carriers may have increased their schedule frequencies since the close of the record and even though additional equipment soon to be available could be concentrated on the route in such fashion as to carry every Chicago-Miami passenger on a nonstop flight, the over-all development of a sound air transportation system will be fostered by adding a third carrier in this market.

The Board in the past has recognized the benefits which accrue to the public from stiff multi-carrier competition in major traffic markets in the form of improved quality and quantity of service, increased coach service, utilization of the most modern equipment, etc. We believe that the authorization of a third Chicago-Miami carrier will bring

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[17] Our general policy with respect to motions to reopen the record for receipt of data on the most recent operating experience has consistently reflected the requirement of the public interest that the record in major route cases be brought to a close as expeditiously as possible, consistent with the requirements of full hearings, so that final decision may be rendered promptly. Institution of needed new services could be endlessly delayed were we to permit the record to be reopened in the final procedural stages of a case for th submission of more recent operating data (and the attendant cross-examination and exchange of rebuttal evidence). Only in the cases where the situation under consideration has changed radically would such a course of action be justified. We are unable to conclude that such is the case on the basis of the matters submitted by Delta and Eastern. Accordingly, their motions to reopen the record will be denied. We have considered Eastern's other requests for relief but find they should be denied.

comparable benefits here. We do not find that the services Delta and Eastern have provided are legally inadequate in terms of section 404(a) of th. .ct. However, we find that the Chicago-Miami market is sufficiently large now and has the inherent potential to support three carriers on an economic basis, and that the public interest will be served by certificating a third carrier.

We discount the carriers' arguments against authorizing another carrier because of a recent drop-off in Chicago-Miami traffic. While there was a small decline in March 1957 over March 1956 Chicago-Miami traffic, sizeable increase in September 1957 over Septmber 1956 traffic resulted in an over-all increase for the year 1957 over 1956. The March 1957 decline was in all likelihood attrib- [fol. 1334] utable to the declining economy, a condition which cannot be regarded as normal. Also, the abnormally bad winter weather in Florida during the 1958 season be blamed for the slackening in Florida traffic which the carriers claim they have experienced in 1958. However, these special circumstances, which influence traffic on a sporadic and temporary basis, cannot be permitted to subordinate the primary factor to be considered; that is, the great growth potential in the Chicago-Florida market which will be spurred by the certification of a third competitive carrier.

Delta's and Eastern's arguments present no real basis for a departure from our established policy of authorizing additional competition in major markets, such as Chicago-Florida, where continued growth can be expected. The results of the competition we have added in major traffic markets in the last few years are now becoming apparent. They show a substantial increase in over-all traffic carried on a passenger and passenger-mile basis. However, the dramatic increase in available seats, following the acquisition of new equipment, has resulted in a drop in load factors over some routes. And it is this decline in load factors which has also been cited as a basis for not authorizing additional competition.

We had occasion to comment on the volume of schedules provided by trunk carriers in our opinions in the *Suspended Passenger Fare Increase Case* and in the so-called *Six*

Percent Case.[18] In those cases we cautioned carrier management against overscheduling. Now we, in turn, have [fol. 1335] been cautioned about authorizing more competition in this case, on the one hand, and for questioning the volume of service carriers provided in competitive markets, on the other. However, it must be recognized that load factors are an index of traffic *plus* the service provided, and their fluctuation does not, in and of itself, reflect increases or decreases in traffic over a particular route. Thus, the provision of an excess of schedules may artificially reduce load factors even as the traffic carried increases. The accurate measure of a market is, of course, the number of passengers actually carried. In the Chicago-Miami market, the local and beyond traffic has been increasing and has a great potential for continued growth. The decline in load factors cited by Delta and Eastern is attributable to their increase in available seats at a rate in excess of the rate of passenger traffic growth.

It has been suggested that more than enough seats are now available to accommodate all travelers, and that therefore an additional carrier in the market is not needed. This is a familiar argument that has been advanced virtually every time a competing authorization has been sought. Undoubtedly, the *threat* of additional competition may cause carriers temporarily to improve service in particular markets; but the *authorization* of additional competition insures the continued provision of a fully competitive service. From a regulatory point of view, we are convinced that the division of a major traffic market among a number of carriers sufficient to insure a lively competition will result in the continued provision of the greater number of benefits to the traveling public. The Board has long followed this policy, and we see no sound reason to depart therefrom.

[fol. 1336] We recognize that the price of the benefits of competition may be the provision of a volume of service

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[18] *Suspended Passenger Fare Increase Case*, Docket No. 8613, Order No. E-11812, September 25, 1957, and *TWA Interim Fare Increase Case*, Docket No. 9288, Order No. E-12203, February 25, 1958.

over and above a "normal" spread between available seats and passengers carried during the initial period following a new carrier authorization. However, we do not regard this result in an expanding major traffic market as contrary to the public interest. With the passage of time and the development of the market, the competing carriers will be better able to gauge the services they provide to their share of the traffic to be obtained. Our policy is justified by experience which has shown that in monopoly markets or certain major markets served by only two carriers, there may be a tendency on the part of the authorized carriers to underschedule or at least to conduct their operations with unduly high load factors. This is understandable from a carrier's profit-making point of view, but it is not consonant with the equally important objective of good service to the public.

Nor are we persuaded that the deterioration in the carriers' earnings positions in recent periods should cause us to deny the public the benefits of competitive service. In developing a sound route structure we must look at the needs of the particular markets under scrutiny in a given proceeding, and give full consideration to the needs of the traveling public in those markets in determining what new services are required. Naturally, we take into account the diversionary impact on other carriers, but that is only one factor to be considered. Where a public need is shown for a new service, we believe it would be unsound to deny it merely on the plea that the general earnings positions of the existing carriers have been depressed.

[fol. 1337] If the existing carriers can prove that they are not making an adequate return, the appropriate remedy may lie in the area of the passenger fare level—not in withholding services that the public needs. After all, our task embraces both the authorization of needed services, and the regulation of fares for such services. We cannot fulfill our responsibilities for developing a sound route structure if we subordinate that function to the preservation of revenues for the existing carriers.

II

We turn now to the Buffalo-Florida route proposals. Our review of the record satisfies us that the route recommended by hte Examiner between Buffalo and Florida should be authorized, and that Capital should be selected to provide the important new services the route makes possible. Buffalo, the northern terminal on the route, will receive first single-carrier service to Florida, and more important traffic-wise, Cleveland and Pittsburgh, both major industrial and business centers in the north, will receive first competitive single-carrier service to Florida. Also, the various important cities on Capital's route No. 51 will have single-carrier access to Florida. We fully agree with the Examiner's findings of a need for the recommended new services in these important markets.[19]

As indicated above, we also agree with the Examiner's choice of Capital to serve the new route. However, since he based his denial of National's application in large part [fol. 1338] on his recommendation that National serve a new Chicago-Miami route, a recommendation which we have not adopted, we wish to comment on the comparative merits of selecting Capital over National to operate this new route. We recognize that National's historical interest in the traffic under consideration gives it a preference for selection over such applicants as Delta and Northwest, but after looking at all the factors to be considered, we find ourselves in agreement with the Examiner's selection of Capital.

We believe Capital has an advantage for selection in its greater historic inferest in and identity with the traffic to be served. Capital is an established carrier in Buffalo, Cleveland and Pittsburgh, and has been providing these cities with service as far south as Atlanta under its present authority. The carrier now serves each of the cities on the northern extension of route No. 51 recommended by

[19] Cleveland-Miami passengers in 1957 averaged 285 per day and Pittsburgh-Miami passengers averaged 195 per day. These two city pairs rank among the top monopoly markets in the country. Cleveland and Pittsburgh-Tampa are also among the top traffic generating city pairs served by a single carrier.

the Examiner. National's interest in the traffic which will move over the new route has been limited to its Buffalo-Pittsburgh-Miami interchange services with Capital operated via Washington. National has no identity in Cleveland or any other of the Great Lakes cities on the new route, whereas Capital provides an important share of their air transportation services. National has carried the Buffalo-Miami interchange passengers farther than Capital and has also carried a considerable volume of Great Lakes-Florida traffic which has moved through the Washington gateway; however, these plus factors are outweighed by Capital's established position in the Great Lakes cities.

Also, because of its present route system in the Great Lakes area, Capital can provide more beyond-segment benefits than can National. National's new services would be limited to the proposed route itself and to such limited traf- [fol. 1339] fic to the Great Lakes as would be generated by the smaller Florida points on its present route such as Ft. Myers, Sarasota and Daytona Beach.[20] Capital, on the other hand, can provide new single-carrier single-plane service to Florida from the many Great Lakes cities on routes Nos. 14 and 41. As discussed more fully below, we will not permit Capital to provide single-plane service to Florida from such points as Detroit, Toledo, Chicago, Milwaukee and the Twin Cities in competition with other new services we are authorizing herein. However, Capital will be able to provide its other Michigan cities, such as Flint, Lansing and Grand Rapids, with first single-carrier single-plane service to Florida via a stop at such route junction points as Cleveland or Pittsburgh.[21] Traffic between Flor-

[20] Traffic from National's Florida cities to Buffalo, Pittsburgh and Cleveland amounted to a little over 14,000 passengers in 1957; whereas for example an average of 285 passengers moved between Cleveland and Miami per day —well over 100,000 passengers in 1957. National cities included are Daytona Beach, Orlando, Lakeland, Sarasota, Ft. Myers and Key West. It is recognized that the National figures are understated since National was on strike for approximately half the September 1957 survey period.

[21] Service from Sault Ste. Marie, Cheyboygan and Traverse City would also require a stop at Grand Rapids, Lansing or one of the other points common to both routes Nos. 14 and 41.

ida and Capital's Michigan cities (excluding Detroit) amounted to over 15,500 passengers in 1956.[22] The only comparable beyond-area traffic National's selection would convenience would be the Havana-Great Lakes traffic which amounted to approximately 2,300 passengers in 1956.[23] Thus, on the basis of beyond-segment traffic benefits, an [fol. 1340] important criterion for selection of Carrier, Capital has a distinct advantage over National.

Perhaps the most important consideration which leads us to select Capital as against National or any other applicant, is the adverse effect on Capital which would unquestionably result from any other selection. Were we to follow such a course, Capital's local traffic between points which are also on the new route and its passengers which have moved to the Southeast partly over Capital's system would be exposed to serious diversion. Such a result is unnecessary in view of Capital's superior claim to the award and would be particularly deleterious in view of its marginal financial position.

The Buffalo-Miami route via Cleveland and Pittsburgh would undoubtedly strengthen National's route system and we are convinced National could provide the needed service. And National, with its past emphasis on development of coach service and its fleet of coach configuration aircraft would be able to develop the coach markets involved more quickly than could Capital. But even giving full weight to these considerations favoring National's selection, we believe the bases for extending Capital's route No. 51 as indicated above are of greater weight.

Various parties have challenged Capital's financial fitness to receive new route awards in this case. These charges include the claims that Capital has been unable to implement recent new route awards, that such extensions have not in fact strengthened Capital, that the carrier has lagged behind in provision of coach service and that it does not have the necessary equipment to provide new services.

The Board recognizes that Capital's route system has been extended into major new markets in recent years and [fol. 1341] that the carrier has not yet fully tapped the

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[22] Includes traffic from Capital's Michigan cities except Detroit to Miami, Tampa-St. Petersburg, West Palm Beach and Jacksonville.

[23] Includes Buffalo/Pittsburgh/Cleveland-Havana traffic.

potential available to it. And we recognize that our extension of Capital to Florida in the present case will further expand the carrier's system into additional major traffic markets and require an over-all increase in the air services it must provide. However, were we to select another carrier to provide the needed new services over the Buffalo-Miami route, merely because that carrier could provide more service more quickly, we would be denying the public the greater number of single-carrier services which only Capital can provide and would be seriously undermining Capital's recent improvement in its financial situation.

The recent operating data, which show important increases in the volume of service Capital has provided, belie the claims that the carrier is unable to expand its operations. For example, for the twelve months ended March 31, 1958, as compared with the twelve prior months, Capital increased its revenue-passenger miles by 37.3 percent and its available seat miles by 39.4 percent. Its over-all revenue ton-miles increased by 37.7 percent, its over-all revenue load factor increased 1.1 point and its coach revenue-passenger load factor was up 2.4 points.

Even in the face of generally increased operating costs and its Viscount re-equipment program, Capital reported a $703,000 operating profit for the twelve months ended March 31, 1958, as compared to an operating loss of $2,263,000 for the twelve months ended March 31, 1957. Capital's ability to make this showing during a period of expansion into new markets and the integration of its Viscount services into major highly competitive markets, rebuts any claims that Capital is unable to assimilate new or extended authorizations.

[fol. 1342] The route extensions proposed for Capital herein will add strength to the carrier's system and undoubtedly further improve its financial position.[24] One important reason for Capital's marginal position is the fact

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[24] The recent "6.6%" fare increase should substantially aid Capital in improving its financial position, especially the $1.00 per ticket increase. This facet of the fare increase is of particular importance for a short-haul carrier such as Capital, since the flat increase applies to each ticket sold, regardless of the mileage involved.

that Capital's length of haul is the shortest of all trunk carriers. Thus, although its passengers have increased substantially in recent periods, Capital carries them for only relatively short distances or for only a portion of their journey. Our grant in the present case will add over 50 miles to Capital's average length of haul [25] which, in terms of revenue, will mean roughly an additional $2.50 per passenger carried.

As to the question of equipment, Capital tried its case on the basis of utilizing Constellation and Viscount aircraft it presently owns, a plan which we have reviewed and which we believe is at least adequate for purposes of resolving the issues before us. We have no doubt that with the important markets being made available to the carrier by our extensions herein, Capital will be able to acquire such additional aircraft as may be needed in the future to satisfy the needs of traffic growth. We were confronted with the same issue with respect to Braniff in the *Southwest-Northeast Service Case*. There we said:

> "It would defeat our objective of greater competitive balance, and in the long run work a serious injury to the public interest, if we were to give undue weight [fol. 1343] herein to the relative ability for early inauguration of a full pattern of competitive service. We are confident that Braniff will obtain satisfactory first line aircraft and provide the type of competitive spur needed in the markets it is being authorized to serve." [26]

The same considerations apply here as to our selection of Capital to serve the Buffalo-Miami route.

We have little doubt but that an established trunk carrier, such as Capital, permanently licensed to operate regulated air transportation service in major traffic markets, is fit, willing and able within the meaning of the Act, and that it will be able to expand its base of operations to the extent necessary to accommodate the needs of the new markets

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[25] Capital's average length of haul for the year ended May 31, 1958, was 388 miles. With the Florida and Buffalo extension, it would be increased to approximately 438 miles.

[26] Order No. E-9758, November 21, 1955, mimeo, p. 15.

certificated herein. The history of the growth and development of the trunk carrier industry gives ample evidence of this fact. We recognize that it may take time for Capital to fully develop and exploit the traffic available under the authority we are granting, but by the same token, the route pattern which we are establishing is not of a short-term nature only, but is based on the needs of the future as well as of the present. These various considerations convince us that Capital rather than any of the other applicants should be authorized to serve the Buffalo-Miami route and that Capital is fit, willing and able to receive the award.

III

We agree with the Examiner that the improved services made possible by the extension of Eastern's route No. 6 from Charleston, W. Va., to Chicago via Cincinnati are required; however, we believe that the need for direct service between Raleigh-Durham and Chicago and the other [fol. 1344] Great Lakes cities has also been clearly demonstrated. Accordingly, we will add Raleigh-Durham as an intermediate point between Roanoke and Greensboro-High Point on Eastern's Chicago- and Detroit-Miami leg of route No. 6.[27] Raleigh-Durham has generated a substantial volume of traffic to the Great Lakes area despite the extreme circuity and inconvenience of existing service. Present single-carrier service to Chicago, provided by Eastern, moves over a circuitous routing via Charlotte, Chattanooga and other intermediate points.[28] The only other available Chicago service is via connections at Cincinnati or Washington. Despite these handicaps, Raleigh-Durham, with a metropolitan population in excess of 200,000, exchanged over 17,000 passengers with the Great Lakes area cities during the two 1956 Survey periods.[29] The

[27] Raleigh-Durham is now an intermediate point on the New York leg of route No. 6.

[28] The service must operate over a combination of Eastern's routes Nos. 5 and 10.

[29] Including Raleigh-Durham on the Chicago- and Detroit-Miami leg of route No. 6 will permit direct service to such important points as Chicago, Cincinnati, Cleveland, Detroit, Akron-Canton, and Pittsburgh.

latest data show that 528 passenger moved between Chicago and Raleigh-Durham during the 1957 Survey periods—almost 7000 passengers when expanded to an annual figure. This volume of traffic is significantly greater than that generated by any of the other Carolina cities except Charlotte which has had more, if not better, service to Chicago.[30] With Raleigh-Durham's importance as a manufacturing, military and educational center in mind, we are satisfied that the point should be added to Eastern's direct route to Chicago.

[fol. 1345] Eastern is not presently authorized to provide direct service between Raleigh-Durham, on the one hand, and Winston-Salem, Greensboro-High Point, Roanoke and Charleston, W. Va., on the other. Piedmont Aviation, Inc. (Piedmont) is authorized to provide local service in these markets. Thus, in order to minimize diversion of local passengers between Raleigh-Durham, on the one hand, and the cities on Eastern's route No. 6 which are also served by Piedmont, on the other, we will require flights serving Raleigh-Durham and the above-named points to originate at Chicago or a point north of Charleston, W. Va., and terminate at Savannah or a point south thereof, or originate at Savannah or a point south thereof and terminate at Chicago or a point north of Charleston, W. Va. We note Eastern's statement on brief that it has no intention of competing for Piedmont's Raleigh-Durham to Greensboro-High Point and Winston-Salem traffic and that it would be willing to accept a closed-door restriction in these markets. However, as we have had occasion to note previously, closed-door restrictions are confusing to the traveling public and deny the through carrier such intermediate traffic support for long-haul operations as may move on the long-haul flights. Piedmont had requested denial or deferral of Eastern's new service proposals in this area. However, we are convinced the long-haul services authorized are required by the public interest and that the restriction we are adopting will adequately limit the competitive impact on Piedmont's local markets without interfering with provision of the required Raleigh-Durham long-haul services.

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[30] Our route 6 extension will, of course, also improve Charlotte's service to Chicago.

IV

The Examiner recommended an extension of Eastern's route No. 10 from Louisville to Detroit via Cincinnati and [fol. 1346] Fort Wayne. However, the new and improved services incident to this recommendation are, for the most part, made available by our other authorizations herein. Thus, by extending Delta's route No. 54 from Cincinnati to Detroit, by adding Louisville and Indianapolis as new intermediate points on Delta's route No. 54, and by adding Cincinnati to Eastern's route No. 6,[31] we will provide competitive service between Louisville and Detroit; Cincinnati and Detroit; Cincinnati, Detroit and Louisville to the Southeast, and single-carrier service between Fort Wayne and the Southeast. We conclude, therefore, that the Eastern route No. 10 extension to Detroit is not required.

As noted above, adding Louisville to Delta's route No. 54 satisfies the need for competitive service to Detroit which the Examiner found to exist, and also affords competitive service to Chicago and the Southeast. Cincinnati will also receive new competitive service to Detroit via Delta and to the Southeast via Eastern. As to Fort Wayne, we find that its needs for service to Florida do not warrant a direct Eastern routing.[32] Rather, its needs are satisfied by the Delta single-carrier service made possible by the addition of Indianapolis as an intermediate point on route No. 54. Fort Wayne and Indianapolis are now served on Delta's Detroit-New Orleans route No. 8, so with the addition of Indianapolis to route No. 54, Fort Wayne can be afforded single-carrier service to the Southeast via the [fol. 1347] Indianapolis route junction point.[33] Other area

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[31] The Examiner recommended the Delta extension to Detroit and the Eastern route No. 6 extension to Cincinnati and Chicago; however, he would have added Indianapolis and Louisville to his proposed new Chicago-Miami route for National.

[32] Based on the 1957 Surveys, Fort Wayne generated only 3.6 daily passengers to Atlanta, 4.7 to Tampa-St. Petersburg and 9.2 to Miami.

[33] Basically the same considerations which apply to Fort Wayne also apply to Eastern's proposal to serve Ashland-Huntington on a new Detroit-Atlanta segment. Ashland-

cities such as Dayton, Columbus and Toledo, which Eastern asks be included on the route No. 10 extension, will receive improved service to the Southeast by means of our Detroit-Cincinnati extension of Delta's route No. 54.

TWA is the existing carrier in the Cincinnati-Dayton-Columbus-Toledo-Detroit markets which Delta will now be able to serve. In the *TWA Cincinnati-Detroit Route Transfer Case*, Docket No. 7378, we are issuing an order, concurrently with our decision herein, instituting a proceeding looking toward the possible deletion of the Detroit-Cincinnati segment from TWA's route and the authorization of a local service in these markets. However, this action does not derogate from our denial of Eastern's application for an extension of route No. 10, since Delta will provide the Ohio cities with their needed service to the Southeast and another carrier—either TWA or a local service carrier—will continue to provide competitive local service. Whether such action as is taken in the new proceeding will affect the service in the Louisville-Detroit local market is an issue to be considered at that time. For the present, our authorization of Delta to serve Louisville adequately provides for the needed competitive Louisville-Detroit service.

Our action in this area satisfies the traffic needs of the points involved and achieves a more equal balance between the two area competitors—Delta and Eastern. Competi- [fol. 1348] tive service between all the major points and the Southeast—our major concern in this case—is provided without giving Eastern the competitive advantages of two alternate routings between Detroit and Miami. Two Eastern Detroit-Miami routings with the support of the various routes 6 and 10 intermediate points could, in our opinion, seriously cripple Delta's efforts to effectively compete in the Detroit-Florida market. In view of our other authorizations, such a result is not required to meet area traffic needs.

Eastern has also proposed the addition of Atlanta as

Huntington's service needs do not justify establishment of a separate segment to provide direct long-haul service. The 1957 Surveys show approximately 4.1 passengers per day to Atlanta, 2.3 to Tampa-St. Petersburg and 7.4 to Miami. The route would also be directly competitive with the Detroit-Atlanta route we are granting to Delta.

an intermediate point on route No. 6. This would make possible nonstop service between Atlanta, on the one hand, and Detroit, Cleveland, Pittsburgh and various other cities on Eastern's Detroit-Miami leg of route No. 6.[34] However, we are authorizing Delta to provide Detroit-Atlanta nonstop service by means of the Cincinnati-Detroit extension of route No. 54, and are authorizing Capital to provide Cleveland-Atlanta nonstop service by the Buffalo-Pittsburgh extension of route No. 51. Capital is presently authorized to provide Pittsburgh-Atlanta nonstop service. We believe these authorizations afford ample opportunity for provision of all the service required in these markets. It may be noted that the traffic to Atlanta is significantly less heavy than that to Florida. For example, in 1957 there were 50 daily Detroit-Atlanta passengers, 33 Cleveland-Atlanta passengers and 32 Pittsburgh-Atlanta passengers as contrasted with 414 daily Detroit-Miami passengers, 285 Cleveland-Miami passengers and 195 Pittsburgh-Miami passengers. Eastern's one-stop service to Atlanta plus the new nonstop authorizations will, in our opinion, suffice [fol. 1349] to insure good service for this traffic. On the other hand, were we to add Atlanta to route No. 6, Eastern would acquire an important competitive advantage because of its entrenched position in Atlanta, which would deter development of a full pattern of Great Lakes-Atlanta services by Delta and Capital. Accordingly, we are denying Eastern's request.[35]

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[34] Chicago-Atlanta nonstop service is presently authorized over route No. 10.

[35] In connection with its request to add Atlanta as an intermediate point on route No. 6, Eastern also seeks removal of the present restriction against service to Augusta and Charleston, S. C., on the same flight. Adding Atlanta to route No. 6 and removing the restriction on Augusta-Charleston, S. C., service would permit direct service between Atlanta, on the one hand, and Augusta, Columbia, Florence, Charleston, S. C., Savannah and Brunswick, and between the Georgia and South Carolina cities and points north and west of Atlanta. Most of these points are, however, served by Delta, which can provide them with direct service to Atlanta, and to such major cities as Chicago and

V

The Examiner found no need to authorize an additional carrier in the Chicago-Washington market, but he recommended removal of the long-haul restrictions on the nonstop services of TWA and United [36] so as to permit both carriers to operate unlimited turnaround flights in addition [fol. 1350] to those of American and Capital. We cannot agree that the long-haul restrictions should be lifted. [37]

The Chicago-Washington services of TWA and United were authorized as a means of permitting these transcontinental carriers to make their long-haul services available to Washington and Chicago, and the existing restrictions accomplish that purpose without authorizing un-

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Detroit to the north. The record does not indicate a sufficient volume of traffic to warrant authorizing Eastern to provide competitive service from these Georgia and Carolina cities to Atlanta and beyond.

Essentially, the same considerations apply to Delta's requests to connect Columbia and Augusta, served on route No. 54, with Charlotte, served on route No. 24, by adding Charlotte as an intermediate point on route No. 54; and its request to add Greensboro-High Point-Winston-Salem as an intermedite point on route No. 54. Eastern is presently authorized to serve these cities and will be able to offer them single-plane service to Chicago, Detroit and its other route No. 6 points to the north. We are unable to find that the traffic involved warrants authorization of competitive service by Delta or by any other carrier.

[36] TWA's Chicago-Washington nonstop flights must originate or terminate at Kansas City or a point west thereof. United's nonstop flights must originate or terminate at Omaha or a point west thereof.

[37] We have also considered the various east-west new route applications involving services to points between Chicago and Washington and have considered the various "closing of the gap" applications which involve essentially east-west service. Like the Examiner, we conclude that they should all be denied except for the removal of certain Northwest and TWA restrictions, the authorization of United's Chicago-Dayton-Columbus-Washington segment and the addition of Baltimore on Northwest's route No. 3.

needed turnaround services between Chicago and Washington.[38] Where, as here, there are already two carriers, American and Capital, authorized to operate shuttle service between Chicago and Washington, we feel that there should be substantial reasons for injecting two more shuttle services before authorizing them. Even the Examiner recognized that there was no public need for the additional services, for he found that the Chicago-Washington market "enjoys an abundance of nonstop service". He went on to conclude that the TWA and United restrictions should be lifted to permit "greater elasticity" in the carrier's operations. It is true that lifting the restrictions would permit greater flexibility in the carriers' operations, but this consideration is heavily outweighed by other factors.

Chicago-Washington is an important regional market which has been intensively exploited and developed by Capital in competition with American's unrestricted service. Capital provided 14 nonstop round trips per day in [fol. 1351] May[39] and the market is Capital's second most important in terms of passengers and passenger-miles. Unrestricted TWA and United turnaround services in the Chicago-Washington market could very seriously affect Capital's financial position. As noted earlier, that carrier is not in a strong financial position, and increased TWA or United turnaround schedules could well divert a substantial portion of the $3.7 million in revenues which Capital derived from this traffic in 1956. We cannot agree that such a result is justified merely to give the transcontinental carriers greater operational flexibility. If we were to adopt such a policy, no restrictions could be justified and the competitive balance between carriers would be destroyed and the position of the smaller carriers seriously jeopar-

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[38] *American Airlines, Inc., et al., Consolidation of Routes*, 7 C.A.B. 337 (1946).

[39] The Examiner did not believe the Chicago-Washington market was "so saturated" with nonstop flights as to preclude lifting the TWA and United restrictions. Without holding more than that the Chicago-Washington services appear ample, as the Examiner also found, we would regard any increased competition with Capital's services resulting from the lifting of the restrictions as unnecessary and undesirable.

dized. In view of these circumstances and the ample service now being provided by Capital and American, the two unrestricted carriers, and by TWA and United, on their long-haul flights,[40] we cannot find that the public convenience and necessity require lifting the restrictions in question.[41]

[fol. 1352] VI

The various new authorizations which we are granting herein present a number of situations in which imposition of restrictions in addition to, or somewhat different from those recommended by the Examiner are required. We shall discuss these issues on a carrier by carrier basis.

Capital

Our extension of Capital's route No. 51 from Pittsburgh to Buffalo via Youngstown, Akron-Canton, Cleveland and Erie raises problems of the impact of Capital's new service on services presently provided in this area by Lake Cen-

[40] The TWA and United Chicago-Washington restrictions are similar in purpose to United's long-haul restriction on Pittsburgh-Chicago service, with which we are concerned in an order in the *New York-Chicago Case*, Docket No. 986 *et al.*, being issued concurrently with our decision herein. Pittsburgh was added to United's system to meet its needs for long-haul service to the west, and a long-haul restriction was imposed to prohibit turnaround service since no need for an additional turnaround carrier had been shown.

[41] The argument that as the trend toward nonstop operations progresses, TWA and United will have less long-haul traffic support for their local Chicago-Washington services and that their participation in this market will decrease, does not cause us to modify our conclusion. We recognize that such a result is possible in various markets throughout the country, but on the facts of the present case, the remedy, if one is presently required, is not to permit the stronger transcontinental carriers, TWA and United, to compete on an unrestricted basis in a regional market with Capital, one of the smaller trunks. There can be no question but that under all the facts, there would be no justification in adding strength to two Big Four carriers at the expense of Capital.

tral. As indicated previously, our purpose in extending Capital's route to Buffalo (and to Miami) is to make available the long-haul services to the Southeast which these points have demonstrated they require. It is not our intention to authorize and no need has been shown for an additional primarily local service in this area. Accordingly, we are imposing a long-haul restriction on Capital's Buffalo-Youngstown, Erie-Cleveland and Erie-Youngstown services—services which Lake Central is also authorized to provide.[42] Flights serving these pairs of points will be required to originate or terminate at Charleston, W. Va., or a [fol. 1353] point south thereof. We believe this restriction will effectively prevent Capital from concentrating service in these short-haul local markets and will insure provision of the long-haul services required. We do not believe it necessary or desirable to proscribe Capital's trunk operations in these local markets entirely, since such closed-door restrictions are objectionable to the traveling public and deny the trunk carrier the support for its long-haul flights of such traffic as may move between intermediate points. In the present instance, we believe the requirement to serve Charleston, W. Va., or a point south thereof, will satisfy our purposes without unnecessarily limiting Capital freedom to schedule flights over the new route.

We also believe a restriction is required with respect to Capital's Atlanta-Florida extension. Little need exists for additional local service between Atlanta, Jacksonville, Tampa-St. Petersburg-Clearwater, West Palm Beach and Miami, since Delta, Eastern and National presently serve these various local markets. As indicated above, the Capital extension to Florida is intended to satisfy the need of Capital's more northerly points for service to Florida. It is therefore appropriate for us to restrict Capital from providing turnaround service south of Atlanta.

Our extension of route No. 51 to Cleveland, a route junction point on routes Nos. 14 and 41, would, without appropriate restriction, permit single-plane one-stop serv-

[42] Lake Central had also requested imposition of a restriction on Buffalo-Erie service by Capital; however, Capital presently holds authority to operate on an unrestricted basis in this market under its certificate for route No. 46.

ice between Florida points, on the one hand, and such major cities as Detroit, Toledo, Chicago, Milwaukee and the Twin Cities, on the other hand. However, by our other route extensions herein, we are providing for service improvements between these named cities and the Southeast via other carriers. Thus, Northwest will provide Twin [fol. 1354] Cities-, Milwaukee-, and Chicago-Florida services and Delta will provide Detroit- and Toledo-Florida services. No need has been shown for an additional service by Capital in these markets. Therefore, it is necessary to appropriately restrict Capital in these markets. We have decided that this may be accomplished by prohibiting single-plane service between the above-named cities and Capital's new Florida points. We are not, however, restricting Capital's freedom to provide single-plane service between Florida and its routes Nos. 14 and 41 Michigan cities, such as Lansing, Flint and Grand Rapids, where no comparable competitive situation exists. These services will be permitted via a stop at an appropriate route junction point.

Somewhat similar considerations require a restriction against single-plane service between Capital's new Florida points and other points served on route No. 51 along the eastern seaboard. Obviously, we do not intend, in this case, to authorize Capital as a fourth New York-Miami carrier. Issues of service in these various east coast markets were recently considered and acted upon by the Board in the *New York-Florida Case*, Docket No. 3051 *et al.*, wherein Capital's application to serve these markets was denied.[43] Accordingly, we will impose a restriction prohibiting Capital from providing single-plane service between its new Florida cities, on the one hand, and New York, Newark, Philadelphia, Harrisburg and the points north and east of Asheville on the east coast leg of route No. 51, on the other hand. And in accordance with the limitations on the scope of the present proceeding, we will prohibit nonstop service between Capital's new route No. 51 points and [fol. 1355] route No. 51 points outside the geographical scope of the case. This will require a restriction against nonstop service between Buffalo, Erie, Cleveland, Akron-

[43] Order No. E-10645, September 28, 1956.

Canton and Youngstown, on the one hand, and Memphis, Huntsville, Birmingham, Mobile and New Orleans, on the other hand.[44]

Although presently authorized by its certificates for routes Nos. 14 and 46 to provide service to all the points on the proposed Buffalo-Pittsburgh route No. 51 extension, Capital is not presently authorized to engage in direct air transportation between Buffalo and Cleveland. This is a local market of a type not essentially in issue in this case; and a substantial question has been raised as to whether any of the consolidated applications covered a Cleveland-Buffalo local service authorization. Apparently no carrier prosecuted an application which would include a Buffalo-Cleveland service, and both American and Mohawk claim lack of notice that this authority was to be considered in this case. With these various considerations in mind, we have decided to prohibit Capital from engaging in air transportation in the Buffalo-Cleveland market. Both points may, however, be served on the same flight to the Southeast.

Delta

We have also decided that Delta's services over the route No. 54 extension north of Cincinnati to Detroit should be subject to a long-haul restriction requiring flights serving Detroit and the new Ohio intermeditae points, to originate or terminate at Atlanta or a point south thereof. This [fol. 1356] restriction will insure provision of the long-haul services we have found required, and only allow the carrier to participate in the Cincinnati-Dayton-Columbus-Toledo-Detroit local markets on a limited basis. The need for turnaround local service operations in these markets will be the subject of direct inquiry in a new investigation being instituted contemporaneously herewith in the *TWA Cincinnati-Detroit Route Transfer Case.*

As noted above, we do not believe additional turnaround

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[44] A specific restriction against nonstop service between Capital's new Florida points and the points to the west as named above, is not required since under the certificate authorization such services would require a stop at Atlanta or Asheville, the segment bifurcation points.

services south of Atlanta are required. Thus, we will require Delta's flights serving the new points Orlando and West Palm Beach to originate or terminate at a point north of Atlanta. Although we are also adding Tampa-St. Petersburg-Clearwater to Delta's route No. 54, we are not imposing the same restriction on Tampa service since it is our intention to grant Delta equal authority to serve Tampa as is now held by Eastern in their common markets from Atlanta to Florida.

Eastern

As in the case of other trunkline authorizations herein, we will place a long-haul restriction on Eastern's services to Cincinnati and Chicago over the new route No. 6 extension from Charleston, W. Va., requiring flights serving Cincinnati and Chicago to originate or terminate at Charlotte or a point south thereof. This restriction, while permitting the long-haul service we have found required, will protect Piedmont's local traffic between Cincinnati and other points in the Carolina area served by both Eastern and Piedmont.[45] Clearly there is no reason on this record [fol. 1357] to authorize Eastern to provide turnaround local service competitive with Piedmont in these markets (between Cincinnati and such points as Roanoke, Winston-Salem and Greensboro-High Point). The long-haul restriction we are imposing will afford sufficient protection of Piedmont without unnecessarily restricting Eastern's flights in this area.

We are also imposing a restriction prohibiting single-plane service between Cincinnati, on the one hand, and Washington and points to the northeast on Eastern's routes Nos. 5 and 6, on the other hand. In the absence of a restriction, such a service could be provided via the Charleston, W. Va., route junction point. As in the case of Capital's New York-Miami single-plane restriction, Cincinnati-Washington service by Eastern was recently considered and denied by the Board in the *Eastern Route Consolida-*

[45] For our discussion of the restriction on Eastern's Raleigh-Durham service see page 28 above.

tion Case, Docket No. 3292 *et al.*[46] We are accordingly prohibiting provision of a similar service via Charleston, W. V., which would otherwise be possible under a combination of the authorization granted in the present case and Eastern's present route No. 5 certificate.

We have also found it necessary to impose a prohibition against San Juan-Cincinnati nonstop service in Eastern's route No. 6 certificate. Eastern's route No. 108 certificate permits nonstop service between San Juan and any route No. 6 or 10 point. However, as indicated above, the limits of this case expressly exclude authorization of nonstop service between new points within the area and points outside the geographical area of the case.

[fol. 1358] Northwest

For the same reasons as are more fully discussed above with respect to the Capital restrictions, we are prohibiting Northwest from providing turnaround service between Atlanta, Tampa-St. Petersburg-Clearwater and Miami.

TWA

In order to protect Lake Central's local Indianapolis-Cincinnati traffic, we will place a long-haul restriction on TWA's nonstop service being authorized in this market. We are granting TWA's request that the present prohibition against Indianapolis-Cincinnati nonstop service be lifted, but will require flights scheduled to serve these points to serve St. Louis or a point west thereof or Pittsburgh or a point east thereof. This will permit TWA to serve both points on the same flight without, at the same time, authorizing a local turnaround type of service directly competitive with Lake Central.

United

With respect to United's new route serving Dayton and Columbus, we are imposing long-haul restrictions to protect Lake Central in its Chicago-Dayton, Chicago-Columbus and Columbus-Dayton markets. Flights scheduled to serve these markets will be required to serve both Chicago and

[46] Supplemental Opinion and Order on Reconsideration No. E-11606, July 23, 1957.

Washington, the points to which the Ohio cities' greatest need for additional service was shown. Here again, the authorization we are granting is appropriately restricted to limit the impact of needed long-haul services on the local service carrier operating in the area.

In imposing the various restrictions discussed above, we believe we have achieved an appropriate accommodation between the needs of the traveling public for long-haul [fol. 1359] services, the requirements of the subsidized local service carriers for protection against undue diversion, and the basic policy of affording operators, of new routes the maximum amount of flexibility in conducting their new operations.

We have considered the various other contentions and exceptions of the parties but do not find that they should alter the results reached herein.[47]

On the basic of the foregoing considerations and all the facts of record we find:

1. That the public convenience and necessity require the amendment of Capital's certificate for route No. 51

(a) by extending the route beyond the intermediate point Pittsburgh, Pa., to the terminal point Buffalo, N. Y., via the intermediate points Youngstown, Akron-Canton, and Cleveland, Ohio, and Erie, Pa.;

(b) by extending the route beyond the intermediate point Atlanta, Ga., to the terminal point Miami, Fla., via

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[47] Nashville, a rule 14 participant in the case, has requested a reopening of the record to show its needs for service to the northeast. However, no new matters have been submitted which were not previously considered by the Board on the two previous occasions when Nashville's motions to be made a party to the proceeding were denied. Orders Nos. E-9734, November 10, 1955 and E-10043, February 28, 1956. Accordingly, Nashville's motion will be denied.

Motions have also been filed requesting contemporaneous consideration of this proceeding with the *Chicago-Milwaukee-Twin Cities Case,* Docket No. 3207 *et al.* On consideration of the contentions made, we find that the motions should be denied.

the intermediate points Jacksonville, Tampa-St. Petersburg-Clearwater, and West Palm Beach, Fla.; and
[fol. 1360] (c) adding the following restrictions:

"(10) The holder shall not provide turnaround service between any of the following points: Atlanta, Ga., Jacksonville, Tampa-St. Petersburg-Clearwater, West Palm Beach, and Miami, Fla."

"(11) The holder shall not provide single-plane service between points in Florida, on the one hand, and Minneapolis-St. Paul, Minn., Milwaukee, Wisc., Chicago, Ill., Detroit, Mich., or Toledo, Ohio, on routes Nos. 14 and 41, on the other hand."

"(12) The holder shall not provide single-plane service between points in Florida, on the one hand, and New York, N. Y.; Newark, N. J.; Philadelphia or Harrisburg, Pa., or points north and east of Asheville, N. C., at described in segments 2 and 3, on the other hand."

"(13) The holder shall not engage in air transportation between Buffalo, N. Y., and Cleveland, Ohio."

"(14) Flights scheduled to serve Buffalo, N. Y., and Youngstown, Ohio; Erie, Pa., and Cleveland, Ohio; or Erie, Pa., and Youngstown, Ohio, shall originate or terminate at Charleston, W. Va., or a point south thereof."

"(15) The holder shall not provide nonstop service between Buffalo, N. Y.; Erie, Pa.; Cleveland, Ohio; Akron-
[fol. 1361] Canton, Ohio, or Youngstown, Ohio, on the one hand, and Memphis, Tenn.; Huntsville, Ala.; Birmingham, Ala.; Mobile, Ala., or New Orleans, La., on the other hand."

2. That the public convenience and necessity require the amendment of Delta's certificate for route No. 54

(a) by extending the route beyond the intermediate point Cincinnati, Ohio, to the terminal point Detroit, Mich., via the intermediate points Dayton, Columbus, and Toledo, Ohio;

(b) by adding the intermediate point Indianapolis, Ind., between the terminal point Chicago, Ill., and the intermediate point Anderson-Muncie-New Castle, Ind.;

(c) by adding the intermediate point Louisville, Ky., between the intermediate points Cincinnati, Ohio, and Lexington, Ky.;

(d) by redesignating the terminal point Charleston,

S. C., as an intermediate point and extending the route from the intermediate point Charleston, S. C., to the intermediate point Savannah, Ga.;

(e) by adding the intermediate points Orlando, Tampa-St. Petersburg-Clearwater and West Palm Beach, Fla., between the intermediate point Jacksonville, Fla., and the terminal point Miami, Fla.; and

(f) by adding the following restrictions:

"(6) Flights scheduled to serve two or more of the following points shall originate or terminate at Atlanta, Ga., [fol. 1362] or a point south thereof: Detroit, Mich., Toledo, Columbus, Dayton and Cincinnati, Ohio."

"(7) Flights serving Orlando or West Palm Beach, Fla., shall originate or terminate at a point north of Atlanta, Ga."

3. That the public convenience and necessity require the amendment of Eastern's certificate for route No. 6

(a) by extending the route beyond the intermediate point Charleston, W. Va., to the terminal point Chicago, Ill., via the intermediate point Cincinnati, Ohio;

(b) by adding the intermediate point Raleigh-Durham, N. C., between the intermediate points Greensboro-High Point, N. C., and Roanoke, Va., and

(c) by adding the following restrictions:

"(6) The holder shall not provide single-plane service between Cincinnati, Ohio, on the one hand, and Washington, D. C., or points north thereof on routes Nos. 5 or 6, on the other hand."

"(7) Flight scheduled to serve Chicago, Ill., on route No. 6, or Cincinnati, Ohio, shall originate or terminate at Charlotte, N. C., or a point south thereof."

"(8) Flights serving Raleigh-Durham, N. C., on the one hand, and Charlotte, Winston-Salem or Greensboro-High Point, N. C., Roanoke, Va., or Charleston, W. Va., on the other hand, shall originate at Chicago, Ill., or a point north [fol. 1363] of Charleston, W. Va., and terminate at Savannah, Ga., or a point south thereof, or originate at Savannah, Ga., or a point south thereof and terminate in Chicago, Ill., or a point north of Charleston, W. Va."

"(9) The holder shall not provide nonstop service be-

tween Cincinnati, Ohio, and San Juan, Puerto Rico, on route No. 108.[48]"

4. That the public convenience and necessity require the amendment of Northwest's certificate for route No. 3

(a) by adding a new segment "5" between the terminal point Chicago, Ill., the intermediate points Atlanta, Ga., and Tampa-St. Petersburg-Clearwater, Fla., and the terminal point Miami, Fla.;

(b) by redesignating the terminal point in Washington, D. C., as an intermediate point and adding the terminal point Baltimore, Md., on segment 2;

(c) by amending condition (4) to eliminate restrictions on service between Detroit, Cleveland, Pittsburgh and Washington; and

(d) by adding the following restriction:

"(8) The holder shall not provide turnaround service between any of the following points: Atlanta, Ga., Tampa-St. Petersburg-Clearwater and Miami, Fla."

[fol. 1364] 5. That the public convenience and necessity require the amendment of TWA's certificate for route No. 2.[49]

(a) by eliminating the present restriction prohibiting scheduled nonstop service between Indianapolis, Ind., and Cincinnati, Ohio; and

(b) by adding a new restriction as follows:

"Indianapolis, Ind., and Cincinnati, Ohio, shall be served on the same flight, only if such flight also serves St. Louis, Mo., or a point west thereof, or Pittsburgh, Pa., or a point east thereof."

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[48] Since Eastern is authorized to provide Chicago-San Juan nonstop service by its certificates for routes Nos. 10 and 108, a similar prohibition of Chicago-San Juan nonstop service is not required.

[49] An amended certificate for TWA's route No. 2 incorporating the amendment referred to above is being issued with our opinion in the *St. Louis-Southeast Service Case*, Docket No. 7735 *et al.*, which is being issued contemporaneously herewith.

6. That the public convenience and necessity require the amendment of United's certificate for route No. 1

(a) by adding a new segment "8" between the terminal point Chicago, Ill., the intermediate points Dayton and Columbus, Ohio, and Washington, D. C., and the terminal point Baltimore Md.,; and

(b) by adding the following restriction:

"(16) Flights scheduled to serve Chicago, Ill., and Dayton, Ohio; Chicago, Ill., and Columbus, Ohio; or Dayton and Columbus, Ohio; shall also serve Chicago, Ill., and Washington, D. C."

7. That Capital, Delta, Eastern, Northwest, TWA and United are fit, willing, and able properly to perform [fols. 1365-1380] the transportation described herein, and to conform to the provisions of the Act, and the rules, regulations, and requirements of the Board thereunder;

8. That the various motions filed by Eastern, Delta, Northwest, Nashville, and Wisconsin requesting reopening of the record, contemporaneous consideration with the *Chicago-Milwaukee-Twin Cities Case*, and other relief should be denied;

9. That, except as granted herein, all applications in this proceeding should be denied; and

10. That this proceeding and the *New York-Florida Case*, Docket No. 3051 *et al.*, should be terminated.

An appropriate order will be entered.

[fol. 1381] BEFORE THE CIVIL AERONAUTICS BOARD

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

—September 30, 1958

Issued pursuant to Order No. E-13024

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
(as amended)

for Route No. 54

Delta Air Lines, Inc., is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Civil Aeronautics Act of 1938, as amended, and the orders, rules and regulations issued thereunder, to engage in air transportation with respect to persons, property and mail, as follows:

1. Between the terminal point Chicago, Ill., the intermediate points Indianapolis and Anderson-Muncie-New Castle, Ind., Cincinnati, Ohio, Louisville and Lexington, Ky., Knoxville, Tenn., Asheville, N. C., and Greenville-Spartanburg, S. C., and beyond Greenville-Spartanburg, S. C., the intermediate points (a) Columbia and Charleston, S. C., and Savannah, Ga., or (b) Augusta and Savannah, Ga., and beyond Savannah, Ga., the intermediate points Brunswick, Ga., Jacksonville, Orlando, Tampa-St. Petersburg-Clearwater and West Palm Beach, Fla., and the terminal point Miami, Fla.;

2. Between the terminal point Chicago, Ill., the intermediate points Indianapolis and Anderson-Muncie-New Castle, Ind., Cincinnati, Ohio, Louisville and Lexington, [fol. 1382] Ky., Knoxville and Chattanooga, Tenn., Atlanta, Ga., and beyond Atlanta, Ga., the intermediate points (a) Macon and Savannah, Ga., or (b) Augusta, Ga., and beyond Augusta, Ga., the intermediate points (i) Columbia and Charleston, S. C. and Savannah, Ga., or (ii) Savannah, Ga., and beyond Savannah, Ga., the intermediate points Brunswick, Ga., Jacksonville, Orlando, Tampa-St. Petersburg-Clearwater and West Palm Beach, Fla., and the terminal point Miami, Fla.; and

3. Between the terminal point Detroit, Mich., the inter-

mediate points Toledo, Columbus, Dayton and Cincinnati, Ohio, and beyond Cincinnati, Ohio, as described in segments 1 and 2.

The service herein authorized is subject to the following terms, conditions and limitations:

(1) The holder shall render service to and from each of the points named herein, except as temporary suspensions of service may be authorized by the Board; and may begin or terminate, or begin and terminate, trips at points short of terminal points.

(2) The holder may continue to serve regularly any point named herein through the airport last regularly used by the holder to serve such point prior to the effective date of this certificate, as amended; and may continue to maintain regularly scheduled nonstop service between any two points not consecutively named herein if nonstop service was regularly scheduled by the holder between such points prior to the effective date of this certificate, as amended. Upon compliance with such procedure relating thereto as may be prescribed by the Board, the holder may, in addition to [fol. 1383] the service hereinabove expressly prescribed, regularly serve a point named herein through any airport convenient thereto, and render scheduled nonstop service between any two points not consecutively named herein between which service is authorized hereby.

(3) The holder shall serve Miami, Fla. only on flights originating or terminating at points north of Jacksonville, Fla.

(4) The holder shall not engage in local air transportation between Knoxville, Tenn., and Chattanooga, Tenn.

(5) Notwithstanding the linear route description in this certificate, as amended, the holder may serve the intermediate point Greenville-Spartanburg, S. C., on flights carrying property and mail only which also serve the intermediate point Atlanta, Ga., and any point or points north thereof on segment "2": *Provided*, That on such flights the holder shall not discharge at Greenville-Spartanburg property or mail which was enplaned at points south thereof and shall not enplane at Greenville-Spartanburg property or mail to be discharged at points south thereof.

(6) Flights scheduled to serve two or more of the fol-

lowing points shall originate or terminate at Atlanta, Ga., or a point south thereof: Detroit, Mich.; Toledo, Columbus, Dayton and Cincinnati, Ohio.

(7) Flights serving Orlando or West Palm Beach, Fla., shall originate or terminate at a point north of Atlanta, Ga.

The exercise of the privileges granted by this certificate, as amended, shall be subject to such other reasonable terms, [fols. 1384-1468] conditions and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate, as amended, shall be effective on November 29, 1958. *Provided, however,* That prior to the date on which this certificate, as amended, would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of September 30, 1958 (Order No. E-13024) insofar as such order authorizes the issuance of this certificate, as amended, may by order or orders extend such effective date from time to time.

The authorization herein to serve Macon, Ga., shall expire on February 1, 1952.[1]

The authority in "5" above shall expire on August 11, 1954, or upon the date the temporary certificates of public convenience and necessity issued pursuant to the Board's Order Serial No. E-3085, dated July 29, 1949, otherwise cease to be effective, whichever shall first occur.[2]

In Witness Whereof, the Civil Aeronautics Board has caused this certificate, as amended, to be executed by its Chairman, and the seal of the Board to be affixed hereto, attested by the Secretary of the Board, on the 30th day of September, 1958.

/s/ James R. Durfee, Chairman (seal.)

Attest:

/s/ Mabel McCart, Acting Secretary.

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[1] Delta has filed an application in Docket No. 5242 for permanent authority to serve Macon, Ga.

[2] Delta has filed an application in Docket No. 6751 to make the above authorization permanent.

[fol. 1469] BEFORE THE CIVIL AERONAUTICS BOARD

OPINION AND ORDER GRANTING AND DENYING STAY OF EFFECTIVE DATE OF CERTIFICATES—Order No. E-13211—November 28, 1958

Served: November 28, 1958

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 28th day of November, 1958.

Docket No. 2396 et al.

In the matter of the

GREAT LAKES-SOUTHEAST SERVICE CASE

By the Board:

On September 30, 1958, we issued our decision in this proceeding (Order No. E-13024) in which, *inter alia*, we (a) extended route No. 51 of Capital Airlines, Inc. (Capital), from Pittsburgh to Buffalo and from Atlanta to Miami via various intermediate points, (b) extended route No. 54 of Delta Air Lines, Inc. (Delta), from Cincinnati to Detroit via intermediate points, (c) extended route No. 3 of Northwest Airlines, Inc. (Northwest), from Chicago to Miami via intermediate points and (d) added a new Chicago-Columbus-Dayton-Washington-Baltimore segment to route No. 1 of United Air Lines, Inc. (United). Petitions requesting reconsideration of that decision have been filed by certain of the carriers and civic parties to the pro- [fol. 1470] ceeding.[1] Answers to the various petitions and replies have also been filed.[2]

[1] Petitions for reconsideration and other relief have been filed by Allegheny Airlines, Inc., Capital Airlines, Inc., Capitol Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Lake Central Airlines, Inc., National Airlines, Inc., Piedmont Aviation, Inc., and United Air Lines, Inc. Petitions for reconsideration have also been filed by the City of Cincinnati, Ohio; The City and Chamber of Commerce of Columbus, Ohio; The City and Chamber of Commerce of Dayton, Ohio; the Greensboro-High Point Airport Author-

[FOOTNOTE 2 ON PAGE 58]

Certain of the parties include in their petitions the request that the November 29, 1958, effective date of the certificates issued pursuant to our prior order be stayed pending issuance of our order on reconsideration. However, because of the detailed matters raised in the petitions for reconsideration, it will not be possible to finally dispose of them until after November 29. Accordingly, we are acting on the requests for stay in this opinion and order. An order disposing of the petitions for reconsideration in full will be issued at a later date.

In assessing the requests for stay, we have, of course, given consideration to the petitions for reconsideration to determine the likelihood of error in our original decision. After reviewing the matters raised in such petitions, we conclude that except as specifically noted hereinafter with [fol. 1471] respect to Eastern's certificate, the parties have not made a sufficient showing of probable legal error or abuse of discretion in our decision so as to warrant that a stay be granted.[3] Moreover, in this proceeding we have found that new services to Florida are immediately re-

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ity; the Commonwealth of Kentucky and the Kenton County Airport Board; the Commonwealth of Kentucky, the State of Ohio and The State of West Virginia (the Commonwealth of Kentucky is an intervenor; however, it does not appear that the States of Ohio and West Virginia are parties or that they have previously appeared pursuant to Rule 14); and the Raleigh-Durham Airport Authority.

[2] Answers and replies were filed by Allegheny, Capital, Delta, Eastern, Lake Central, National, Northwest, TWA, United, the City and Chamber of Commerce of Atlanta, the City and Chamber of Commerce of Birmingham, Buffalo Chamber of Commerce, Charlotte, Muscle Shoals Chamber of Commerce, Pittsburgh Chamber of Commerce, Raleigh-Durham Airport Authority, the Commonwealth of Kentucky and the States of Kentucky, Ohio and West Virginia.

[3] By Order No. E-13190, dated November 21, 1958, and Order No. E-13198, dated November 25, 1958, we stayed the effectiveness of the new Capital, Delta, Eastern and Northwest certificates for the period to and including December 6, 1958, for the convenience of the Second Circuit Court of Appeals in considering Eastern's and Piedmont's request for a judicial stay.

quired by the public convenience and necessity during the 1958-1959 season. We are of the opinion that these services should be put into operation at the advent of peak winter season in order to give the traveling public the full advantage thereof.[4] This consideration, in our judgment, clearly weights the scale (except in the case of the Eastern award) in favor of a denial of the requested stay. This will afford the traveling public the advantages of the new services we have found required immediately during the 1958-1959 season.

With respect to our consideration of the petitions for reconsideration we wish to comment on certain of the matters raised by the petitions.

1. Chicago-Miami and related markets.

Delta and Eastern contest our extension of Northwest's route No. 3 from Chicago to Miami, via Atlanta and Tampa-St. Petersburg-Clearwater, contending that no need exists for a third carrier in these markets. The carriers' arguments along these lines are, in the main, repetitive of [fol. 1472] matters previously presented and considered by the Board in reaching our decision.

The carriers contend that traffic between Chicago and Miami has dropped off, that the market already has all the benefits of fully competitive service, that Delta and Eastern can satisfy the market's service needs, and that the Board has failed to consider the impact of jet service in this market. Eastern also alleges that the Board failed to consider the diversionary impact on Eastern of all the new route awards made in this case.

We have no intention of repeating here the findings specifically set forth in our opinion and in the Examiner's Initial Decision, which we adopted, as to the growth shown in the Chicago-Miami market and our conviction that it will continue to grow. Looking first to the claim that the Chicago-Miami traffic has declined in 1958, we find that the latest traffic data available from carrier reports filed with the Board show a slight decrease in certain of

[4] We also believe that Columbus and Dayton should receive the benefits of United's new service as soon as possible.

the markets along the new Northwest route. March 1958 O & D Survey Reports data show an overall decrease of 3 percent in the traffic movement between the points Northwest will serve, as compared with the March 1957 figures.[5] However, as indicated in our prior Opinion, this decline can be attributed primarily to the bad 1958 weather in Florida and in part to the general nationwide business recession.[6]

[fol. 1473] We are not convinced that this slight traffic decline, caused by an abnormal seasonal year and a general business recession, means the end of future growth in these markets. If we were to rescind our decision extending Northwest to Miami on the basis of this factor, we would be closing our eyes to the continuing economic development in Florida and would be concluding that the past tremendous traffic growth trend in the Chicago-Florida market had ended. Our action in extending Northwest's route rests in important part on the continuing development of Florida as one of the nation's major traffic generating areas. Nothing has been submitted to us to indicate that this long-term trend is tapering off.

In addition to the weather factor, it must be recognized that the 1958 drop-off in traffic along the new Northwest route parallels general industry-wide conditions. However, preliminary traffic data for the month of October 1958 show an increase in industry revenue passenger miles of over 4 percent over October 1957.[7] Trunk carrier net operating income for the year ended September 1958 showed a sizeable 45 percent increase over net operating income for

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[5] Forms 2787 for March 1-14, 1958 and March 1-14, 1957. Based on Delta and Eastern sales only.

[6] Weather Bureau reports indicate the following variations from normal Miami temperatures and rainfall:

	Jan. '58		Feb. '58		March, '58	
Temperatures:	High	Low	High	Low	High	Low
	+3	−22	+9	−22	+9	−14
Precipitation:	+3.61 in.			−0.24		+2.91

[7] Preliminary carrier reports to the Air Transport Association.

the year ended June 1958.[8] These figures indicate that general industry conditions are on the upswing. We are confident this general improvement will continue and that the Chicago-Miami market will maintain its position among the very top traffic generating pairs in the country. The carriers have submitted nothing which would lead us to believe that the Chicago-Miami route traffic will not continue to grow in line with its long-term trend once the [fol. 1474] aberrations due to the 1958 bad weather and the recession have passed.

Even though the Chicago-Miami traffic leveled off in the most recent period, we do not believe our decision should be changed. We wish to reiterate one of our basic points as to the benefits of third carrier competition in a market of the size of the Chicago-Miami market.[9] Such a market is of great economic importance to Delta and Eastern, as they allege; however, this fact in and of itself is not sufficient to *insure* provision of the quantity and quality of service such a large market requires if its continued growth and development are to be fostered. Despite the carriers' contentions to the contrary, it is a fact that their past services have not fully met the reasonable demands of the traveling public.[10] Even though the carriers may be able to provide a full pattern of competitive service now, we believe the authorization of a third competitive carrier is necessary to *insure* that result. The fact that jet aircraft, with their greater seating capacity, will soon be available for use over the Chicago-Miami routes, does not negate the validity of this proposition. Whether or not

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[8] Forms 41. Certain of this increase is, of course, attributable to recent fare increases.

[9] We detailed the comparative size of this market in our prior Opinion, p. 3. Chicago-Miami is by far the largest two-carrier market in terms of both passengers and passenger miles.

[10] See Examiner's Report page 271 ff. In discussing the need for a new Chicago-Miami route via intermediate points, the Examiner cites, *inter alia*, difficulties experienced by passengers in securing space on Chicago-Florida flights, operations at abnormally high load factors, civic condemnation of available services, etc.

total flights operated over the route can be reduced as a result of the increased capacity of jet aircraft,[11] does not [fol. 1475] affect in any way the fact that the presence of a third competitive carrier will operate to guarantee that ample service of the highest quality is always available.[12]

Objecions have also been raised as to the inclusion of Atlanta and Tampa-St. Petersburg-Clearwater (Tampa) on the new Northwest Chicago-Miami route. However, as in the case of Chicago-Miami flights, the Examiner found that load factors on express flights between Atlanta and

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[11] The Board has never refused to award needed new routes because of particular technological advances in the type of aircraft operated by the industry. We see no reason to change this policy now. As indicated above, the fact that the number of jet frequencies required to carry a given volume of traffic will be less than with piston engine aircraft does not affect our conclusion that a third carrier is needed to insure provision of the service we deem required between Chicago and Miami. If less jet flights are required than are now operated with conventional aircraft, honest and efficient management will dictate that the carriers operate less flights. The presence of the third competitive carrier will, however, dictate provision of enough flights to insure the market's development.

As to the economics of jet operations, this a matter which cannot be ascertained as yet from experience data. In any event, it is a matter more relevant to rate level than to the public need for new routes. The carriers have not supported their claim that our decision, made at the threshold of the jet age, violates our obligation to promote sound economic conditions in the industry. In fact, the spurs of added competition and of the attractiveness of jet aircraft should go hand in hand in insuring the full development of the Chicago-Miami traffic which we are seeking.

[12] Eastern claims we erroneously relied on beyond-area traffic which Northwest could carry in considering the need for a third Chicago-Miami route. However, without here considering the relevance of beyond-area traffic vis-a-vis the "need" issue, it is clear from our Opinion that beyond-area traffic benefits were considered only with respect to the selection of carrier issue.

Chicago and between Tampa and Chicago were operated at abnormally high levels and that additional carrier authorizations were required to bring about necessary improvements in service. The Examiner also considered the important support these points would add to the route. In our prior Opinion we adopted these findings, and noted [fol. 1476] the long-term growth trend in the Chicago-Atlanta and Chicago-Tampa markets.

In 1957, more than 52,000 passengers moved between Chicago and Atlanta. Northwest's participation in this traffic, which we are convinced will continue to grow, will strengthen its operations along the new route as well as provide additional service for the Atlanta passengers.[13]

The Examiner also found a neew for improvements in Tampa-Great Lakes service. He recommended inclusion of Tampa on the third carrier Chicago-Miami route and on Delta's route No. 54. We agree. However, Eastern, which presently serves Tampa on a monopoly basis from Great Lakes cities, challenges our granting Tampa authority to both Northwest and Delta.

We believe a point such as Tampa, which generated almost 800,000 passengers in 1957—over 2200 per day, requires a full pattern of competitive service not only to meet its present needs but also to insure full development of its passenger potential. During 1957, a total of 799,097 air passengers originated or terminated at Tampa St. Petersburg as follows:

Traffic to and from Great Lakes Area	297,089
Traffic to and from East Coast Area	211,432
Traffic to and from Florida points	176,943
All other	113,633
Total 1957 Tampa-St. Petersburg traffic	799,097

[13] The above discussion indicates our reasons for including Atlanta on the Northwest route on an unrestricted basis. We are not persuaded by Delta's petition insofar as it requests either removal of Atlanta from the route or imposition of a restriction requiring Northwest to overfly Atlanta on Chicago-Florida flights. Grant of either of these requests would unnecessarily weaken the route and interfere with needed service improvements.

[fol. 1477] Our decision herein provides either first single carrier service or first competitive service to all but a small number of the 297,089 passengers originating or terminating at cities north of Tampa which are within the boundaries of this proceeding.

Our decision to include Tampa on the Northwest route is based on a number of factors. First, the city deserves and can support competitive service to Chicago. The Examiner's finding that the quality of its service needs improvement supports this conclusion. It is also apparent that the success of Northwest's operations between Chicago and Miami rests in some part on the support to the route generated by such major intermediate points as Tampa (and Atlanta). Thus, the addition of Tampa to the route not only meets Tampa's own needs for competitive service, but also supports frequencies over the entire route. Including Tampa means more service can be operated on an economic basis between all the points on the new route, both nonstop and via intermediate points.

We are also adding Tampa to Delta's route No. 54. The Examiner found a need for competitive service from Tampa to Detroit and the other cities which Delta can serve on route No. 54. In our prior Opinion, we also concluded that the benefits of competitive Detroit-Tampa service warranted adding the point to Delta's route. Over 41,000 passengers moved between Detroit and Tampa-St. Petersburg during 1957. A market of this size, approximately 115 passengers per day, clearly warrants the added service a second carrier will provide and the benefits of the traffic which should result from this award. Adding Tampa to Delta's route not only brings competition in the Detroit market, but also in many other markets where Delta and [fol. 1478] Eastern compete in the area between the Great Lakes cities and Florida. This general evening out of the competitive pattern between Delta and Eastern in the Great Lakes-Southeast area, which we achieve in part by adding Tampa to Delta's route, has been one of our goals in deciding this case.

The carriers also object to our awards in this and in the *St. Louis-Southeast Service Case* insofar as multiple carrier competition is authorized between Atlanta and Florida points. However, as we made clear in our prior

Opinion, these authorizations were not premised on local traffic needs south of Atlanta. Rather, in this case, the Board was confronted with accommodating the needs of the Great Lakes cities for service to the Southeast, and our route extensions were accordingly drawn so as to meet these long-haul service requirements. We established, and intended to establish, a network of routes radiating out from Atlanta and Florida to the various important metropolitan centers to the north. Because these extensions were not meant to meet local Atlanta-Florida needs, we imposed certain long-haul restrictions intended to insure provision of the required long-haul service and to prohibit unnecessary additional local turnaround service.

We remain convinced that to be effective, the new carrier route extensions must serve the primary Florida tourist centers. The fact that there may be little need for additional local service south of Atlanta does not mean that the inclusion of Atlanta and the Florida points on the new route extensions is not required by the public convenience and necessity. We are satisfied that the public convenience and necessity for including these points on routes extend- [fol. 1479] ing to such points as Chicago, Detroit, Cleveland, Pittsburgh and Buffalo has been established. Obviously, we could not justify routes from Great Lakes cities which would terminate at such points as West Palm Beach or Orlando, for example. However, including smaller Florida points on the new routes adds strength to the basic Great Lakes-Florida routes granted and conveniences those Great Lakes passengers whose ultimate Florida destination is neither Miami nor Tampa-St. Petersburg-Clearwater who would otherwise be required to make multi-carrier connections.

The carriers' claims that these multiple carrier authorizations south of Atlanta will be economically disastrous are greatly exaggerated. In the first place, it is very questionable whether the new carriers will schedule stops at each and every point from Atlanta south on their long-haul flights. They will be more interested in carrying the lucrative long-haul passengers from the Great Lakes cities on a nonstop or limited-stop basis and can be expected to carry local traffic only on an incidential by-product basis. And, of course, an examination of the markets involved on a passenger mile basis, the basis which reflects the

revenues derived from this traffic, indicates that possibilities for revenue diversion do not involve large sums. The following Table indicates the markets involved and the estimated diversion from Eastern:

[fol. 1480] Probable Diversion From Eastern Between Atlanta and Florida Points Inherent In Awards To Capital, Delta, Northwest and TWA

(Amounts in Thousands)

	1956			1958			
	Total Market	EAL Participation	EAL % of total	Total Market	Diversion[14]	EAL Participation	EAL % of total
Capital							
Rpm's[15]	146,601	97,055	66.2	190,581	8,756	117,415	61.6
Dollars	8,240	5,454		10,711	492	6,599	
Delta							
Rpm's	71,292	57,291	80.4	92,680	5,480	68,998	74.4
Dollars	4,007	3,220		5,209	308	3,878	
Northwest							
Rpm's	96,681	68,930	71.3	125,685	5,892	83,718	66.6
Dollars	5,433	3,874		7,063	331	4,705	
TWA[16]							
Rpm's	96,681	68,980	71.3	125,685	5,892	83,718	66.6
Dollars	5,433	3,874		7,063	331	4,705	
Duplication in Awards	249,821	182,039		324,766		221,065	
Total Unduplicated							
Rpm's	161,434	110,167	68.2	209,865	26,020[17]	152,784	63.3
Dollars	9,073	6,191		11,794	1,462	7,462	

Source: Brief of Eastern to the Board
Appendix A—Delta Pairs
B—Delta Pairs
C—Capital Pairs

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[14] a. Applicants estimated maximum possible participation:

2nd carrier in market 40%
3rd carrier in market 20%
carriers with restrictions 10%

Cf. *Southwest-Northeast Service Case*, Order No. E-9758, November 21, 1955.

b. *Probable* diversion is shown as 66⅔% of maximum *possible* participation, as assumed by Eastern in Appendices A, B and C to its Brief to the Board.

[15] Revenue passenger miles.

[FOOTNOTES 16 AND 17 OF PAGE 67]

[fol. 1481] Thus, we estimate that in 1958, 26 million revenue passenger miles will be available to Capital, Delta, Northwest and TWA between Atlanta and points south which would be retained by Eastern in the absence of our new route awards in this area. However, Eastern's 1958 revenues from the traffic it would carry south of Atlanta ($7.4 million) would be increased approximately 11% over 1956 ($6.1 million). The diversion Delta might suffer due to the competition added from Atlanta south will be more than offset by its new Tampa-Chicago authorization.

It should also be noted that traffic south of Atlanta does not follow the very market seasonal fluctuation which characterizes the Great Lakes-Florida traffic.[18] Thus, with the reduced number of frequencies operated by the new long-haul carriers during the off-peak season, the impact of their new authorizations in the local markets during the off-peak season will be considerably reduced.

As to local frequencies, Eastern and National will have more flights in these markets because of their several routes to Florida from various distant cities than will the new carriers. For example, Eastern and National flights operated along the dense New York-Miami route can be expected to carry a good share of this local traffic. Eastern and National will undoubtedly continue to carry the greatest proportion of the local traffic. The amount of local traffic the new carriers will take is not significant enough

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[16] TWA is included for the purpose of showing total probable diversion from Eastern from awards in this case and in the *St. Louis-Southeast Case*, pertaining to Atlanta-South.

[17] The present participation of Delta, Eastern and National in the south of Atlanta markets has been taken into account in preparing this estimate.

[18] Traffic between Atlanta, Jacksonville, Orlando, Tampa, St. Petersburg, West Palm Beach and Miami totaled 13,754 passengers in March 1957 and 9,649 passengers in September 1957. On the other hand, Chicago-Miami March 1957 passengers totaled 17,360 as against 6,717 passengers in September 1957, a 158.4 percent variation as against a 42.5 percent variation in the south of Atlanta traffic.

[fol. 1482] in our judgment to deny the new carriers the support these points will give or to deny Great Lakes passengers the benefits of single-carrier service to their ultimate Florida destination.[18a]

Eastern's claim that the Florida extension of Northwest's route violates the Ashbacker principle (*Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945)) in the absence of simultaneous consideration of Eastern's application to extend its routes north and west of Chicago is without merit. Eastern submitted no exhibits in this case purporting to show that its application to provide service west of Chicago to the Twin Cities and beyond to the Pacific Northwest and Northwest's Chicago-Southeast application are mutually exclusive, nor did the carrier attempt, by traffic analyses or other economic studies based on the evidence of record in the proceeding, to spell out and justify by facts its claim of mutual exclusivity. Rather its approach has been merely to make the claim and by so doing to shift to the Board the burden of establishing that the applications are not in fact mutually exclusive.

Although we believe that a carrier making a claim of mutual exclusivity has the burden of establishing that the grant of one application will, as a matter of economic fact, preclude a subsequent grant of its own application, we have, nonetheless, considered this matter independently against the facts of record. That consideration convinces [fol. 1483] us that the grant of Chicago-Atlanta-Tampa/St. Petersburg/Clearwater-Miami authority to Northwest will not preclude a subsequent grant of Eastern's application for an extension of its routes west from Chicago to the Pacific Northwest. Eastern's ability to establish that the public convenience and necessity require an ex-

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[18a] Implicit in our discussion above is our conclusion that the alleged adverse effects of the multiple carrier authorizations south of Atlanta do not require us to substitute National, which does not serve Atlanta, for Capital over the Buffalo-Miami route as suggested by Delta. Our reasons for selecting Capital to provide needed services over this route are detailed elsewhere in this opinion and in our prior opinion.

tension of its routes west of Chicago will depend in large measure on whether there is a need for additional service between Chicago, Milwaukee and other points on Northwest's routes west of Chicago [19] and that burden would be the same whether or not Northwest were extended to Florida.

Even to the extent that the availability of through traffic might be a factor in the decision, the presence of Northwest's Chicago-Miami service would not prevent the award. Admittedly, Miami, Tampa, and Atlanta are important traffic markets and a subsequent grant of Eastern's application would involve a duplication of Northwest's services between those three points and points on its existing route west of Chicago. However, only a glance at the airline routeman will show that Eastern with its extensive route authorizations south and east of Chicago will be able to support its proposal by traffic not merely from these three points, but from a large number of additional communities located to the southeast of Chicago. Whatever the prejudice that an award to Northwest may cause [fol. 1484] to Eastern's application, the facts demonstrate beyond question that it will not preclude a later grant of that application.[19a]

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[19] In this connection it should be noted that in the present case the decision to establish a third route between Chicago and the Southeast was based solely on the needs of the Chicago-Atlanta-Tampa-Miami markets. The question of through service benefits between points west of Chicago and the Southeast did not even come into the picture except as a factor in selecting the carrier to perform the Chicago-Southeast services that had been found to be required.

[19a] As a matter of fact, Eastern will be accorded simultaneous consideration of its application to provide Twin Cities-Florida service with those of Northwest and other carriers in the pending *Chicago-Milwaukee-Twin Cities Case*, Docket No. 3207 *et al.* In fact, the Examiner in that case has found that the public convenience and necessity require authorization of one unrestricted and one restricted new Twin Cities-Miami services.

In its Brief to the Examiner, Eastern requested the Examiner (a) to reopen the record for receipt of evidence on the matter of mutual exclusivity, or (2) to rule that findings on the issue were impossible on the record or, at the least, (3) to reconsider his rulings refusing to issue subpoenas or direct production of data requested by Eastern. The Examiner had ruled that Eastern's request for load factor data related to the routes of other carriers outside the area covered by the proceeding, should be denied on grounds of relevance and materiality. Notice to All Parties, May 2, 1956. In his Initial Decision, the Examiner affirmed his prior ruling. Initial Decision p. 279. The Examiner did, however, permit carriers to show traffic flows moving to and from points beyond the area of the proceeding which would be convenienced by grant of a particular application and had ruled at the hearing that Eastern was permitted to explore the mutual exclusivity issue. Transcript of hearing pp. 1330-1, Initial Decision p. 4. Eastern apparently chose to cross-examine other carrier witnesses on the mutual exclusivity point rather than to make its own evidentiary presentation.

Although Eastern attempted to tie its request for these load factor data to the mutual exclusivity argument, the data which Eastern sought do not appear to us to be rele- [fol. 1485] vant to the issue of mutual exclusivity. In other words, we see no direct connection between Northwest's Chicago-West Coast load factors and the question whether grant of the Chicago-Miami route to Northwest forecloses grant of Eastern's Chicago-Twin Cities-West Coast application as a matter of economic fact. In any event, Eastern's failure to submit evidence on its own on the issue of mutual exclusivity, forecloses the carrier from now claiming that the record is incomplete or that it was denied a proper hearing. Also the fact that Eastern had appealed the Board's order of consolidation but that the Court's Opinion was not handed down until after the hearing in this case was concluded, did not in any way relieve Eastern of its burden of developing evidence on the mutual exclusivity issue on the record if it intended to assert this

claim at a later stage of the proceeding.[20] Eastern's own brief to the Examiner indicates its awareness of the Board's ruling in other cases to the effect that all carriers are free to urge mutual exclusivity on the basis of the evidence as to applications not consolidated in a particular case. Since such issues depend upon an evaluation of all pertinent facts, they cannot be resolved until the conclusion of the case. A carrier may then argue the mutual exclusivity issue from all the evidence of record, including such evidence as the carrier has introduced directed specifically to the issue of mutual exclusivity.

None of the carriers' contentions discussed above persuade us that the Northwest route award should be stayed [fol. 1486] or that any part of our decision herein has violated the *Ashbacker* principle.

2. Capital's Buffalo-Miami route.

We turn next to the Capital route award. National contests our selection of Capital to operate the new Buffalo-Miami route, alleging that we failed to consider, *inter alia*, its greater participation in the traffic involved, its superior ability to provide the necessary service and its greater need for strengthening. However, as our Opinion made clear, we gave full consideration to these matters and to the advantages which would result from the selection of National to operate this route, but concluded that the weightier considerations pointed to the selection of Capital. We need comment on only a few of National's claims.

We recognize that on a passenger mile basis National has participated to a greater extent than has Capital in the traffic which may be expected to move over the new

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[20] The Board's limitation of the issues to be considered in this proceeding (naming Chicago as the northwestern border point on the area to be considered) was sustained by the U. S. Court of Appeals for the District of Columbia in *Eastern Air Lines, Inc.* v. *C.A.B.*, 243 Fed. 2d 607 (1956).

[fol. 1487] route.[21] However, we do not regard this factor as requiring National's selection. The great bulk of the traffic with which we are concerned, is generated at Capital's Great Lakes cities, not at points on National's system.[22] Our award merely permits the originating carrier

[21] We specifically alluded to this fact at page 21 of our prior Opinion. It should be noted, however, that Capital participates in the carriage of more Great Lakes-Florida passengers than does National, illustrated by the following table:

Passengers Carried Between
Buffalo, Cleveland and Pittsburgh and Jacksonville, Miami, St. Petersburg, Tampa, West Palm Beach, Orlando By Capital and National

	Passengers	*Carrier*
Buffalo	1874	Capital
	1558	National
Cleveland	32	Capital
	46	National
Pittsburgh	510	Capital
	360	National
Total	2416	Capital
	1964	National

Source: March 1-14, 1957 O & D Survey

[22] Capital Exhibit 33 shows that 95 percent of its Great Lakes-Florida round-trip traffic was ticketed at Great Lakes points. This fact is, in our opinion, dispositive of National's claim that we looked only at the northern end of the Buffalo-Miami route in considering the matter of identity in the market. It is clear that the greater identity is with Capital, the carrier which generated the greater share of the traffic. Traffic between National's system points (Fort Myers, Sarasota, Lakeland, Wilmington, New Bern, Fayetteville, Valdosta and Marietta), on the one hand, and Buffalo, Cleveland and Pittsburgh, on the other hand, amounted to only 5590 annual passengers in 1956, whereas for the same period Capital carried over 15,500 passengers between its Michigan cities and Florida alone. Over 4,400 passengers moved between Erie and Youngstown alone, on the one hand, and Miami and Tampa-St. Petersburg, on the other, in 1956.

to carry the passengers all the way to their final destination. As indicated in our Opinion, Capital has operated with the disadvantage of a relatively short average length of passenger haul, e.g. carrying Great Lakes cities passengers to either Washington, Atlanta or Pittsburgh for connections on to Florida. Since this traffic is Capital-generated traffic, we believe Capital must be considered as having the greater historic interest in it.

We previously considered the comparative abilities of the two carriers to operate the Buffalo-Miami routes, their comparative "need for strengthening"[23] and the diver- [fol. 1488] sionary impact of selecting one carrier over the other. Although National reargues these matters, the carrier has not shown us to be in error in these regards or with respect to our primary conclusion that the selection of National would result in serious unwarranted diversion of local traffic in the heart of Capital's system (Norfolk-Washington-Pittsburgh-Cleveland-Buffalo) and of Capital's Great Lakes-Florida traffic. For this Capital-generated traffic to be given over to a carrier not identified in its area of generation would be untenable. As to National's comparative diversion argument, it is, of course, certain that the Capital extension will result in the diversion of some traffic which National would otherwise carry. The traffic is principally that which moved over the Capital-National interchange via Washington. We recognized National's interests in this traffic in our prior Opinion; however, we concluded that the overall benefits to be derived from our selection of Capital, would more than outweigh the loss of this traffic by National.[24]

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[23] National's claim that we did not mention its "need for strengthening" in discussing the Buffalo route overlooks our explicit recognition that "National's route system could well be strengthened" in connection with out discussion of Northwest's Chicago-Miami award at page 10 of our prior Opinion. In reaching our decision herein, we recognized National's need for route strengthening and gave Capital no preference for selection on the basis of "need for strengthening".

[24] The Buffalo-Miami route is not sufficiently dense to warrant grant of National's alternative request that it be authorized to serve the route in addition to Capital.

Eastern also requests us to specifically rule on certain matters affecting Capital's fitness set forth in its "Amendment of Motion to Reopen The Record", dated May 2, 1958. In that document Eastern alleges that Capital attempted [fol. 1489] to inform the Board of certain new equipment acquisition plans on an *ex parte* basis. We considered Capital's fitness and its new service proposals in this case on the basis of the carrier's own presentation of record and on the basis of equipment presently owned and operated, as is clearly indicated at page 25 of our prior Opinion. No new Capital equipment arrangement was before us in this case and our deliberations were guided only by the record evidence.[25]

It is true that word of a Capital equipment acquisition arrangement came to us prior to our decision in this case. On January 27, 1958, we received a teletype message from General Dynamics Corporation stating that it had entered into an agreement with Capital covering the sale of 15 Convair 880 aircraft and undertaking, on notice from Capital, to arrange for leasing to Capital of up to ten 1049H Constellation aircraft pending delivery of the 880's. By letter of February 12, 1958, the Board asked Capital to submit a copy of the agreement to the Board since it raised a question as to the existence of a section 408 control relationship between Capital and General Dynamics. By letter of February 14, 1958, Capital submitted a copy of the agreement to the Board. Since the agreement was not final and the undertakings of the parties were not definite, the Board informed Capital, by letter of March

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This would mean two carriers between Buffalo and Florida and three carriers from Pittsburgh and Cleveland. We are unable to find that such multi-carrier authorizations are required in these markets at this time. We have also considered Eastern's arguments relative to an extension to Buffalo and to a connection of its Washington and Pittsburg authorizations but find that nothing therein should cause us to alter our decision to extend Capital's route to Buffalo and Miami and to deny a stay of the effectiveness of Capital's amended certificate.

[25] Eastern also asserts that private discussions were held between Board Members and a high executive of General Dynamics Corporation. No such discussions took place.

7, 1958, that a determination whether section 408 was or was not involved could not be made. It was therefore suggested that Capital and General Dynamics consult the staff [fol. 1490] when the arrangement had been finalized to consider whether the Act requires the filing of an application and prior approval of the arrangement by the Board before its terms could become effective. Board records do not indicate that such contacts with the staff have been made or that a final agreement has been filed.

Even though we were aware of the Capital-General Dynamics negotiations from trade press reports and from the exchange of correspondence referred to above,[26] this factor, not of record in this case, did not affect our decision in any way. As was made abundantly clear in our Opinion, the selection of Capital to operate the new Buffalo-Miami route was based on factors in favor of its selection which outweighed to a considerable degree the claims of other carriers to the route.[26a]

We are satisfied that the effectiveness of the amended certificate authorizing Capital to operate a Buffalo-Miami route should not be stayed.

3. Diversion from Eastern.

We turn now to Eastern's claim that we did not fully consider the cumulative diversionary impact of our awards in this case on Eastern in reaching our conclusions herein. The following table indicates that Eastern's financial position will not be seriously affected by our awards in this case.

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[26] Capital points out in an answer to Eastern's May 2 filing that most of the details of its arrangement with General Dynamics were publicly stated in testimony and exhibits in the *General Passenger Fare Investigation*, Docket No. 8008.

[26a] We have considered Eastern's contentions but cannot conclude that Capital's conduct in regard to this matter renders it unfit to receive the Buffalo-Miami award.

[fol. 1491] Probable Diversion from Eastern Inherent in Authorizations to Capital, Delta and Northwest in Great Lakes Case

(Amounts in Thousands)

	1956			1958			
	Total Market	EAL Participation	EAL % of total	Total Market	Diversion[27]	EAL Participation	EAL % of total
Capital							
Rpm's	370,724	321,175	86.6	481,937	85,673	331,854	68.9
Dollars	20,835	18,050		27,085	4,815	18,660	
Delta							
Rpm's	560,561	528,998	94.4	728,729	145,774	541,924	74.4
Dollars	31,504	29,730		40,955	8,192	30,456	
Northwest							
Rpm's	708,123	479,487	67.7	920,560	76,343	546,978	59.4
Dollars	39,797	26,947		51,735	4,290	30,740	
Duplication	256,581	216,550		332,136		254,083	
Total Unduplicated	1,382,824	1,113,110	80.5	1,799,090	307,790	1,166,673	64.8
Dollars	77,715	62,557		101,109	17,298	65,567	

[fol. 1492] Thus, we estimate that in 1958 Eastern will receive almost $66 million in revenues from the routes over which competition is being added in this case as compared with the $63 million it received from these routes in 1956. Capital, Delta and Northwest will, in our judgment, share $17 million in future revenues which in the absence of our awards herein would be available to Eastern.[28] It should be made clear that we are here discussing potential revenues which Eastern must share with the new competitive carriers. Our table indicates that even though Eastern will not participate in the affected markets to the same extent (100% in certain cases) it has in the past, Eastern

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[27] Estimated on same basis as the table on page 12 above. The $7.4 million diversion figure referred to in our prior Opinion (p. 8) as Eastern's diversion estimate adjusted to conform to the Chicago-Miami route we are authorizing, was not adjusted to reflect the participation factors we have used in making our estimates. The participation factors we have used differ from those assumed by Eastern in its estimate.

[28] If course, Eastern would not take all the increase in the Chicago-Miami market which Delta also presently serves.

will still continue to carry a greater share of the traffic in these markets than will its competitors.[29] It should also be noted that the $17 million figure refers to gross revenues and clearly does not mean that Eastern's profits will be affected in that amount.

The diversion estimate is also subject to downward adjustment because the traffic estimate used in the table above does not include the growth over and above normal growth which we would expect in those markets which Eastern has been serving as a monopoly carrier. Thus, as to Capital's new authorizations, 69 percent of the total passenger revenue included in the table, is, by Eastern's own figures, derived from monopoly markets.[30] The same is true as to [fol. 1493] Delta's new authorizations.[31] Eighty percent of the revenue that we estimate Delta would divert from Eastern is derived from what are now Eastern monopoly markets. Thus, we believe the actual dollar diversion which Eastern will experience will be offset by the added growth due to the spur of competitive service in these markets in which Eastern will share.

The foregoing analysis indicates to us that the overall impact of our awards herein will not seriously affect Eastern. We estimate that Eastern will receive more revenues in 1958 from these markets than the carrier received in 1956. Eastern will not, however, be the sole beneficiary of expected traffic growth.

4. Petition of Piedmont.

Piedmont Aviation, Inc. (Piedmont), has challenged certain aspects of (a) our extension of Eastern's route No. 6

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[29] General carrier experience indicates that newly authorized carriers do not share available traffic on an equal pro rata basis with existing carriers already established in the market.

[30] For example, Capital will now participate in the following markets in which Eastern has been the monopoly carrier: Cleveland-Florida and Pittsburgh-Florida.

[31] For example, Delta will now participate in the following markets in which Eastern has been the monopoly carrier: Indianapolis-Florida, Louisville-Florida and Tampa-Chicago.

from Charleston, W. Va., to Cincinnati and Chicago, and (b) the addition of Louisville, Indianapolis and Dayton to Delta's route No. 54.[32] The carrier requests the Board to amend Eastern's certificate to eliminate Chicago and Cincinnati from Eastern's route No. 6 and, if found required, to add Cincinnati on Eastern's route No. 10 to Chicago; or to extend route No. 6 to Cincinnati and Chicago from Columbia, S. C., or a point south thereof and to Chicago from Charlotte and/or Raleigh-Durham or a point south thereof. [fol. 149] Piedmont also asks the Board to eliminate the Eastern route No. 6 extension between Raleigh-Durham and Greensboro-High Point, and to prohibit Delta from providing one-plane service between Lexington and Asheville on the one hand and Louisville, Indianapolis and Dayton on the other. Piedmont argues that the scope of the issues in this case, the evidence of record, *Ashbacker* considerations and sound discretion require that the Chicago extensions be made in the form it suggests. The carrier's contentions, insofar as immediate impact on its present system operations is concerned, are primarily pointed to the diversion Piedmont would suffer as a result of new services Eastern could provide under its new authorization between Cincinnati on the one hand and such points as Raleigh-Durham, Greensboro-High Point, Winston-Salem, Roanoke and Charleston, W. Va., on the other.

We have considered Piedmont's contentions and have concluded that serious questions are raised concerning the scope of the issues in the proceeding, mutual exclusivity, and exclusion of evidence by the Examiner. In considering the question of stay we note also that because of a strike of some of its employees Eastern in any event is presently unable to inaugurate service on this route, and thus will not be injured to any great extent by a stay at this time. Accordingly, we have concluded that any service Eastern may be planning in these markets should be postponed until we have fully considered the matters raised in Piedmont's petition for reconsideration. Our action is without prejudice to the right of Eastern to seek modification of

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[32] Piedmont has requested the Board to stay the effectiveness of certain aspects of the new Eastern route No. 6 certificate.

this stay to permit the operation of services which will not cause injury to Piedmont.

[fol. 1495] 5. Miscellaneous matters.

Two final matters. Eastern questions the legality of our decision because of the press release procedure followed in announcing our tentative vote on the issues in this proceeding.[33] There is no validity to this claim nor has Eastern shown how it has been harmed in any way by this procedure.[34] Cf. *New York-Florida Case*, Order No. E-10884, December 21, 1956.

We have fully considered the other matters raised by the parties with respect to the amended Capital, Delta, Northwest and United certificates. We have considered the various carrier contentions insofar as they involve arguments that carriers other than Capital, Delta or United should receive certain of the new authorizations we have granted, arguments that presently authorized carriers can adequately provide service in markets where we have authorized new competitive service, and arguments as to Capital's fitness; however, we do not find that any of the contentions should cause us to further delay the effectiveness of the certificates issued to these carriers pursuant to our prior Opinion.

In view of all the foregoing we conclude that, except with respect to Eastern's certificate, the requested stays should not be granted. In the interim, the Board will address itself to the merits of the petitions for reconsideration, and our order dealing with these matters will issue at a later date. [fols. 1496-1508] To the extent that we have considered the petitions for reconsideration in the present order we have done so only for the purposes of assessing the probability

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[33] Press Releases dated March 26 and March 31, 1958.

[34] Eastern asks that the minutes of the Board's meetings at which the issues in this case were considered be made public. By separate communication dated November 17, 1958, we advised Eastern that it could inspect the minutes in question. At the same time we advised Eastern that no Bureau of Air Operations staff members were present during our deliberations.

of error in our original decision. We feel that such action is necessary to a fair consideration of the stay requests, and is in no way prejudicial to the legal rights of those parties seeking reconsideration. Nothing in the present order forecloses the Board from full and complete consideration of the pending petitions for reconsideration on their merits.

Accordingly, It Is Ordered:

1. That the effectiveness of Eastern's amended certificate for route No. 6, issued pursuant to Order No. E-13024, September 30, 1958, be and it hereby is stayed pending further order of the Board.

2. That, subject to the provisions of paragraph 1 hereof and of Order No. E-13190, the requests for stay of the effectiveness of the certificates issued pursuant to Order No. E-13024 [35] be and they hereby are denied.

Durfee, Chairman, Denny and Hector, Members of the Board, concurred in the above opinion and order. Gurney, Vice Chairman, filed the attached concurrence and dissent. Minetti, Member, did not take part in the decision.

/s/ Mabel McCart, Acting Secretary. (Seal.)

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[35] TWA's new certificate for route No. 2 was issued pursuant to the orders in this case and in the *St. Louis-Southeast Service Case.* The certificate has been temporarily stayed pursuant to action in the *St. Louis Case* and is not affected by our action herein.

[fol. 1509] BEFORE THE CIVIL AERONAUTICS BOARD

SECOND SUPPLEMENTAL OPINION AND ORDER ON RECONSIDERATION—Order No. 13835—May 7, 1959

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 7th day of May, 1959

Docket No. 2396 *et al.*

In the matter of the

GREAT LAKES-SOUTHEAST SERVICE CASE

Extensive petitions for reconsideration have been pending before the Board since our original decision in the above-entitled proceeding, Order No. E-13024, dated September 30, 1958. Subsequent orders have disposed of requests for stay and for changes in limited phases of our original decision.[1] We now address ourselves to the merits of the petitions for reconsideration, particularly insofar as they attack the basic authorization of Northwest to operate a Chicago-Miami route; of Delta to operate a Detroit-Miami route; of Capital to operate a Buffalo-Miami route; of United to operate a Chicago-Dayton-Columbus-Washington route, and the denial of competing applications to provide service over these routes. These questions were con-
[fol. 1510] sidered heretofore when we disposed of earlier requests for stay, and extensive findings were contained in our order covering the stay matter.

Upon full consideration of the petitions for reconsideration, we find that the findings and discussion in our Order denying the requests for stay fully and adequately express our conclusions with respect to the requests for reconsideration of those awards. Accordingly, we affirm our findings in Order No. E-13211 and incorporate them herein by this reference insofar as pertinent to our denial of the peti-

[1] Opinion and Order Granting and Denying Stay of Effective Date of Certificates (Order No. E-13211, dated November 28, 1958); Opinion and Order Lifting Stay and Amending Certificate (Order No. E-13526, dated February 18, 1959); Supplemental Opinion and Order on Reconsideration (Order No. E-13728, dated April 10, 1959).

tions for reconsideration of our award of Northwest's Chicago-Miami route, Delta's Detroit-Miami route, Capital's Buffalo-Miami route and United Chicago-Washington route. We believe nothing further need be added with respect to our disposition of these issues.[2]

1. There are, however, a number of certificate restriction matters which warrant consideration. First, Allegheny requests the Board to prohibit Capital from providing local service over amended route No. 51 between Erie and Cleveland. The carrier argues that the Erie-Cleveland situation is similar to that between Buffalo and Cleveland where [fol. 1511] the Board imposed such a restriction. With respect to Buffalo-Cleveland, the Board noted that a substantial question had been raised as to whether any application for such a service had been actively prosecuted in the proceeding, and that the local market was not of the long-haul type essentially in issue in the case. We concluded that the imposition of the requested restriction was warranted. We now find that the same basic considerations apply with respect to Erie-Cleveland and conclude that Capital's authority in this market should be restricted to prohibit the carrier from engaging in air transportation in this market, but allowing the carrier to serve both points on the same flight to the southeast as requested by Allegheny. It seems

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[2] Included are such matters as Eastern's applications to extend route No. 10 from Louisville to Detroit, to serve Atlanta on route No. 6 and to connect its east coast route No. 6 segment with Buffalo and Pittsburgh; Capital's request to operate between Miami, on one hand, and certain points north and west of Cleveland, on the other; Capitol Airways' certificate application, etc. We have considered and reject Capitol's contention on reconsideration that it was deprived of a fair hearing by reason of the fact that certain members of Congress who appeared at oral argument urged the selection of Northwest for the Chicago-Florida route for which Capitol was also an applicant. The appearance of Congressmen in oral argument is governed by Rule 14 of our Rules of Practice which was promulgated in furtherance of sections 401(e) and 402(d) of the Act. The appearances here were fully in compliance with our Rule as it has been interpreted since its inception.

clear that the restriction will not adversely affect Capital's long-haul operations. At the same time, the restriction will protect Allegheny in one of its more important markets.

2. We also agree with Lake Central's request for imposition of long-haul restrictions on Delta's flights over route No. 54 between Louisville and certain points to the north. Thus we will amend Delta's certificate to provide that flights providing service between Chicago and Indianapolis, Indianapolis and Cincinnati, Indianapolis and Louisville, and Cincinnati and Louisville, shall originate or terminate at Atlanta or a point south thereof. We added Louisville and Indianapolis to Route No. 54 to provide those cities with competitive long-haul service over Delta's Chicago-Miami route. In the present instance Lake Central has applications under consideration in the *Great Lakes Local Service Case*, Docket No. 4251 *et al.*, which seek the addition of Louisville to its system. There are also involved [fol. 1512] in that proceeding issues which could result in improved less restricted Lake Central service between Chicago, Indianapolis and Cincinnati. Accordingly, we have decided that the long-haul restrictions mentioned above should be imposed at the present time subject to further consideration, simultaneous with our decision in the *Great Lakes Local Service Case*, of whether the restrictions should be continued after final decision in the *Great Lakes Local Service Case*. By this course of action, we are preserving now the distinction between the types of service to be provided by major regional trunks and local service carriers. If, after deciding the issues presented in the *Great Lakes Local Service Case*, we conclude that the long-haul restrictions are not required, we will have full freedom to remove them at that time. Meanwhile we cannot envisage these restrictions having any adverse effect on Delta's long-haul route No. 54 operations, whereas they will deter provision by Delta of the local turnaround service usually associated with local service carrier operations.

3. Substantially similar questions have been raised by Piedmont's request for prohibition of single-plane service between Asheville and Lexington, on the one hand, and Dayton, Indianapolis and Louisville, on the other hand. Piedmont presently serves Louisville-Asheville and Louisville-

Lexington, and the addition of Louisville to Delta's route No. 54 permits Delta to compete in these markets. Here again we have no intention of permitting Delta to provide competitive turnaround service in these local markets, and accordingly will require the carrier to originate and terminate its flights in these markets at Atlanta or a point [fol. 1513] south thereof. We believe that such a long-haul restriction is amply protection for Piedmont and that a prohibition against single-plane service is not required. Such a prohibition could result in reducing the affected cities' volume of long-haul service.

A somewhat different situation is presented with respect to Piedmont's request for protection in the markets between Lexington and Asheville, on the one hand, and Dayton and Indianapolis, on the other hand. Piedmont is applying for authority to serve Dayton and Indianapolis in the *Great Lakes Local Service Case*. As in the Lake Central-Louisville case discussed above, we believe long-haul restrictions should be imposed now, but subject to their possible withdrawal at the time of decision in the *Great Lakes Local Service Case*.

4. United has requested us to lift the certificate restriction requiring its flights between Chicago and Columbus, Chicago and Dayton, and Dayton and Columbus to serve both Chicago and Washington. Columbus and Dayton support this request. We have concluded, however, that these petitions should be denied. Our grant to United of the new Chicago-Washington segment via Dayton and Columbus was based on the need for Dayton-Columbus service to Washington and Chicago, and the restrictions imposed insure provision of that service. Our award was not based upon the need of the Ohio cities for services west of Chicago, although our selection of United took cognizance of the fact that United could provide improvements in this regard. West of Chicago service is not precluded by our award to United, and, of course, TWA provides the Ohio [fol. 1514] cities with single-plane service west of Chicago. By allowing our original decision to stand, we will insure a full pattern of service between Washington, on the one hand, and the Ohio cities, on the other hand. We recognize that the market between the Ohio cities and Chicago is substantially greater than the market to Washington; however,

the primary need to which United directed its case was that between the Ohio cities and Washington and Chicago. It was to meet that need that the Board certificated United to serve Columbus and Dayton, and the restrictions imposed on that authorization merely insure provision of the service intended.

5. It has been suggested that the Buffalo-Florida route awarded to Capital should be split into two routes, with National receiving Buffalo-Pittsburgh Southeast rights, and Capital retaining Buffalo-Cleveland Southeast rights. In this fashion both carriers would be successful applicants, but we believe the public would be the loser. We cannot overlook the fact that the Buffalo-Florida market is of limited size, and in order to command nonstop service to Florida on an economic basis, must offer sufficient traffic to support nonstop frequencies. It is our judgment that the authorization of two nonstop carriers at this time would so dilute the market as to interfere with the provision of the nonstop service on an economic basis. Since Buffalo is the northern terminal of the route in question, it must depend entirely on traffic enplaning or deplaning at Buffalo to support nonstop frequencies and cannot look to "beyond" or so-called "back-up" traffic to sustain nonstop services. By allowing only one carrier to provide Buffalo-[fol. 1515] Southeast nonstop service, there is a much better prospect that the public will receive nonstop service to the Southeast at reasonable hours and in reasonable relationship to the available traffic. If and when one carrier fails to meet the service needs of the market, there will be ample time to remedy the situation.[3] In the meantime, Capital should be permitted to exploit the full potential of the market until there is a showing that a second carrier is needed.[4]

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[3] Cf. *Dallas to the West Service Case*, Docket No. 7596, Order No. E-13503, decided February 11, 1959, where competitive service was authorized for Amarillo and Lubbock where the monopoly carrier failed to provide a full pattern of nonstop service.

[4] Reference has been made to our recent award of competitive service in the *St. Louis-Southeast Service Case*, Docket No. 7735 *et al.*, Order No. E-13026. The St. Louis-

Aside from nonstop service for Buffalo, the availability of both Pittsburgh and Cleveland as intermediate points to support the Buffalo route will give further assurance that Buffalo will receive a full pattern of service to the Southeast in the form of one-stop services augmenting the nonstops. By the same token, Buffalo traffic will lend support to the frequencies that Capital will be able to offer between Cleveland or Pittsburgh and the Southeast, in competition with Eastern. We cannot overlook the fact that a new carrier entering the Cleveland and Pittsburgh-Florida markets for the first time, in competition with Eastern faces a major [fol. 1516] task in rendering effective competition. We think that more vigorous competitive service will be insured if Capital retains the entire route as originally awarded.

The Board has considered the various other matters raised by the parties in their petitions for reconsideration but has concluded that they do not warrant any further change in our prior decision or indicate that our prior decision was in error. Accordingly, except as granted herein, the petitions for reconsideration and other relief will be denied.[5]

Miami/Tampa/St. Petersburg market involved is larger than the Buffalo-Miami-Tampa-St. Petersburg market. In any event, however, the factual situations in the two cases are distinguishable as indicated in our opinions in the two cases. Moreover, the certification of competitive service does not merely depend upon number of passengers available, but turns upon many factors comprising public convenience and necessity, including the calibre of the services heretofore provided, the extent to which the potential has been tapped, the effect that particular proposals will have on the route structure, and the like.

[5] As an adjunct to the argument that our Press Release policy is unlawful, it has been said that we "review the evidence and make findings and conclusions by means of a delegated opinion-writing process after the decision in a case has already been made public." These characterizations of our decisional process simply do not accord with the facts. As previously explained (Order No. E-10884, dated December 21, 1956) our press release is not a decision of the Board. And by no stretch of the imagination do we delegate the responsibility for the findings we make to sup-

It is ordered:

1. That amended certificates of public convenience and necessity in the forms attached hereto be issued to Capital Airlines, Inc., for route No. 51 and to Delta Air Lines, Inc., for route No. 54;

2. That said certificates shall be signed on behalf of the Board by its Chairman, shall have affixed thereto the seal [fols. 1517-1585] of the Board attested by the Secretary and shall be effective on the date of this order;

3. That the application of Delta Air Lines, Inc., in Docket No. 7530, insofar as it requests unrestricted authority to engage in air transportation between Chicago, Ill., and Indianapolis, Ind.; Indianapolis, Ind., and Cincinnati, Ohio; Indianapolis, Ind., and Louisville, Ky.; Indianapolis, Ind., and Lexington, Ky.; Indianapolis, Ind., and Asheville, N.C.; Dayton, Ohio, and Lexington, Ky.; Dayton, Ohio, and Asheville, N. C.; Cincinnati, Ohio, and Louisville, Ky.; Louisville, and Lexington, Ky.; and Louisville, Ky., and Asheville, N. C., be and it hereby is deferred for contemporaneous decision with the *Great Lakes Local Service Investigation,* Docket No. 4251 *et al.;*

4. That except to the extent granted herein, or in previous orders in this proceeding, all petitions for reconsideration and for other relief be and they hereby are denied.

Durfee, Chairman, and Denny, Member of the Board, concurred in the above opinion and order. Gurney, Vice

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port our decisions. The opinions of the Board setting forth its findings are signed by each Board Member subscribing to the opinion and are intended to reflect, as the statute contemplates, the reasons for the Board's action. The mere fact that the Board has available for its assistance, an Opinion Writing Division to perform such tasks as are assigned to it, does not derogate from the integrity of our decisions any more than does any other technical assistance which the Board obtains from its own personal assistants or other Bureaus of the Board. The findings which this Board issues speak for the Board Members who sign them and are the responsibility of those Board Members alone.

Chairman, and Hector, Member, filed the attached separate concurring and dissenting statements. Minetti, Member, did not take part in the decision.

/s/ Mabel McCart, Acting Secretary. (Seal.)

[fol. 1586] IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 25,852

DELTA AIR LINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent,

LAKE CENTRAL AIRLINES, INC., et al., Intervenors

On Petition for Review of Orders of the Civil Aeronautics Board

Additional Joint Appendix

[fol. 1587] BEFORE THE CIVIL AERONAUTICS BOARD

Docket No. 2396, et al.

In the matter of the

GREAT LAKES-SOUTHEAST SERVICE CASE

PETITION OF LAKE CENTRAL AIRLINES, INC. FOR RECONSIDERATION OF ORDER NO. E-13024 AND CONDITIONAL MOTION FOR EXTENSION OF EFFECTIVE DATE OF AMENDED CERTIFICATE FOR ROUTE NO. 54—Received October 31, 1958

Comes now Lake Central Airlines, Inc. ("Lake Central") through its atttorney of record and petitions the Board for reconsideration of its opinion and order (No. E-13024) in the above proceeding served October 2, 1958, in the following respects and for the reasons stated:

1. The Board at pages 36, 42, 43, 47 and 48 of its opinion, and in the amended certificates issued pursuant to Order No. E-13024, took care to restrict the authority of some

of the trunklines awarded extensions in this proceeding so as to protect the local services being provided by Lake Central in the Great Lakes area. At page 36 of the opinion, the Board stated that Capital's amended authorization for route No. 51 would be subjected to a long-haul restriction designed to protect Lake Central's Buffalo-Youngstown and Erie-Youngstown services. At page 42 the Board, while lifting TWA's restriction against serving Cincinnati and Indianapolis on the same flights, imposed a restriction requiring that such service be provided only on long-haul flights in order to prevent TWA from operating service between Cincinnati and Indianapolis "directly competitive with Lake Central." At pages 42 and 43 of the opinion, the [fol. 1588] Board spelled out its reasons for restricting United's new authority between Chicago, Dayton, Columbus and Washington, permitting such service to be provided only on a long-haul basis so as to "limit the impact of needed long-haul services on the local service carrier operating in the area." The Board spoke at page 43 of its opinion of "the requirements of the subsidized local service carriers for protection against undue diversion."

2. In other portions of its opinion the Board:

(a) imposed a long-haul restriction on the services to be provided by Delta on the extension of its route No. 54 from Cincinnati to Detroit via Dayton, Columbus and Toledo and stated that "The need for turnaround local service operations in these markets will be the subject of direct inquiry in a new investigation being instituted contemporaneously herewith in the *TWA Cincinnati-Detroit Route Transfer Case*" (pages 40, 46) and

(b) imposed a long-haul restriction on the services to be provided by Eastern on the extension of its route No. 6 from Charleston to Cincinnati and Chicago, in order to protect Piedmont's local traffic (pages 40-41, 46).

3. Lake Central has no objection to any of the aforementioned restrictions and heartily agrees with the Board's reasons for imposing them.

4. In the light of the Board's policy, as expressed in the foregoing actions, of protecting the local service traffic of Lake Central, Piedmont and Allegheny from diversion, Lake Central believes that the Board's failure similarly

to restrict Delta's authority in its certificate for route No. 54 so as to protect other Lake Central traffic was entirely an oversight on the Board's part.

5. Specifically, the Board added Indianapolis to Delta's route No. 54 as an intermediate point between Chicago and [fol. 1589] Anderson-Muncie-New Castle. The next intermediate point south of Anderson-Muncie-New Castle on route No. 54 is Cincinnati. Since Delta does not provide service to Anderson-Muncie-New Castle, its service pattern will actually involve a duplication of two Lake Central segments: Chicago-Indianapolis and Indianapolis-Cincinnati.

6. Chicago-Indianapolis is a short-haul market only 162 miles in length now served by three carriers: American, Eastern and Lake Central. Neither Chicago nor Indianapolis appeared in this proceeding and neither therefore urged the certification of *any* additional service—either between Chicago and Indianapolis or between Chicago or Indianapolis and points south of Indianapolis. Delta's own exhibits and briefs do not show any need for additional service between Chicago and Indianapolis. The failure of the Board to impose a long-haul restriction on Delta's service between Chicago and Indianapolis is therefore clearly an inadvertent omission, and Lake Central requests that such a restriction be imposed by the Board on reconsideration.

7. Indianapolis-Cincinnati is an even shorter haul market of only 98 miles which, prior to the Board's present decision, was authorized to receive service from only American and Lake Central. In its decision which accompanied Order No. E-13024, the Board permitted TWA to serve Cincinnati and Indianapolis on the same flights, but in order to protect Lake Central's local traffic in this market, made TWA's service subject to a long-haul restriction. TWA has been certificated to serve Indianapolis and Cincinnati on its route No. 2 for many years; it did not object to the imposition of the long-haul restriction which the Board placed on its authority at the urging of Lake Central. Clearly, if TWA, which has been certificated into both cities for many years, is to be subject to such a restriction, Delta—a newcomer—should not escape a similar restriction. A reading of Delta's exhibits and briefs shows [fol. 1590] that Delta did not base its case for the addition

of Indianapolis to route No. 54 upon any alleged need for additional local service between Indianapolis and Cincinnati. Indianapolis did not take part in the proceeding and Cincinnati, which did, nowhere took the position that additional local service was required in the Indianapolis-Cincinnati market. Lake Central submits, therefore, that the Board should on reconsideration further amend Delta's certificate for route No. 54 so as to subject its flights between Indianapolis and Cincinnati to a long-haul restriction. Again, it would appear from the Board's action in imposing a long-haul restriction on TWA's flights in this market that the Board's failure similarly to restrict Delta's authority was clearly an inadvertent omission.

8. The Board also added Louisville to Delta's route No. 54 as an intermediate point between Cincinnati and Lexington. This addition, without appropriate restrictions, would permit Delta not only to operate turnaround service between Louisville and Cincinnati, but also—with the exercise of its skip-stop authority—to provide nonstop Louisville-Indianapolis and Louisville-Chicago services. As heretofore stated, neither Chicago nor Indianapolis appeared in this proceeding, hence there is no expression in this record of any interest on the part of either city in additional local service to Louisville. The Board's opinion indicates (page 5) that Louisville was added to Delta's route No. 54 so as to give Louisville a competitive service to Florida and the Southeast and to Detroit. The Board also took cognizance at page 30 of its opinion of the fact that the question of service in the Louisville-Detroit local market is an issue to be considered in the proceeding which the Board concurrently instituted in Docket No. 9891, from the *TWA Cincinnati-Detroit Route Transfer Case*.

There are in issue in the *Great Lakes Local Service Investigation*, Docket No. 4251, *et al.*, proposals to provide [fol. 1591] *local* service between, *inter alia*, Louisville and Cincinnati, Louisville and Indianapolis, Louisville and Dayton, Louisville and Columbus, Louisville and Toledo, and Louisville and Detroit. Lake Central's proposal to serve the Louisville-Cincinnati segment is an integral part of its proposal to provide much-needed service between Evansville and Cincinnati—a service need which the Board indicated in its decision in the *Eastern Air Lines Route*

Consolidation Case, Docket No. 3292 et al., would be considered in the *Great Lakes Local Service Investigation.* These are all local markets in the same sense that the markets between Cincinnati and Detroit on the extension of Delta's route No. 54 are local markets. The Board should not by its action in the present proceeding prejudice the disposition of the applications pending in the *Great Lakes Local Service Investigation* or foreclose itself from providing, in the latter proceeding, true local service for these local service markets. To the extent that the *local service* aspects of the trunkline applications in this case involve the same services as are proposed by the local service carriers in the *Great Lakes Local Service Investigation*, Lake Central is of the opinion, as was stated at page 7 of its brief to the Board, that comparative consideration is required under the Ashbacker doctrine. Lake Central therefore urges that the Board further amend Delta's certificate for Route No. 54 so as to require that any services it operates between Louisville and any point or points north thereof on either the Cincinnati-Chicago segment or the Cincinnati-Detroit segment of route No. 54 shall be by flights which originate or terminate at Atlanta or a point south thereof.

9. The amended certificate for route No. 54 issued to Delta pursuant to Order No. E-13024 will become effective on November 29, 1958, unless such effective date is extended by the Board. Lake Central hereby requests that if it shall appear to the Board that its decision on this and other petitions for reconsideration cannot be published [fol. 1592] and served upon the parties, including Lake Central, at least five working days prior to November 29, 1958, the Board enter an order postponing the effective date of such amended certificate. This postponement is deemed essential to permit Lake Central to determine in the light of the Board's action on its petition for reconsideration what action, if any, it should take.

Wherefore, Lake Central requests that the Board reconsider its opinion and order No. E-13024 in the respects named above and, upon reconsideration, amend the certificate of Delta for route No. 54 so as to provide (a) that flights scheduled to serve Chicago and Indianapolis or

Indianapolis and Cincinnati shall originate or terminate at Atlanta, Georgia, or a point south thereof; and (b) that flights scheduled to serve Louisville and any points or points north thereof on either the Cincinnati-Chicago segment or the Cincinnati-Detroit segment of route No. 54 shall originate or terminate at Atlanta or a point south thereof. Lake Central also requests that the Board grant the request contained in Paragraph No. 9, supra, with respect to a stay of Order No. E-13024 and the effective date of Delta's amended certificate for route No. 54 on the conditions set forth in Paragraph 9. Lake Central requests such other and further relief as to the Board may appear appropriate and in the public interest or required by the public convenience and necessity. If further argument is ordered by the Board in this proceeding, Lake Central respectfully requests the privilege of presenting argument in support of this petition for reconsideration. Likewise, if the record in this proceeding is reopened for the purpose of receiving additional evidence with respect to any issue, and providing the relief requested in this petition is not granted, Lake Central respectfully requests the op- [fol 1593] portunity to present evidence on such reopened record in support of its objections as set forth in this petition for reconsideration.

Respectfully submitted, Lake Central Airlines, Inc.,
By: /s/ Albert F. Grisard, Attorney.

October 31, 1958.

[Certificate of Service.]

BEFORE THE CIVIL AERONAUTICS BOARD

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 21st day of November, 1958

Docket No. 2396 et al.

In the Matter of

GREAT LAKES-SOUTHEAST SERVICE CASE

Docket No. 3051 et al.

In the Matter of the

NEW YORK-FLORIDA CASE

ORDER No. E-13190—November 21, 1958

Our Order E-13024 awarded various certificates of public convenience and necessity to various air carriers to become effective on November 29, 1958. It appears that Eastern Air Lines, Inc. has filed with the United States Court of Appeals for the Second Circuit petitions for review and for stay pending review of certain awards to Capital Airlines, Inc., Delta Air Lines, Inc., and Northwest Airlines, Inc. The Board has been advised that it will be inconvenient for the Court to immediately dispose of the petition for stay, and that the convenience of the Court would best be served by a postponement of the effective dates of such awards until December 7, 1958.

[fol. 1594] Accordingly, It is Ordered That the effectiveness of the amended certificates of public convenience and necessity issued by our Order E-13024 be and they are hereby stayed to and including December 6, 1958 insofar as such certificates:

a. Grant Northwest Airlines, Inc. a new route segment between Chicago, Atlanta, Tampa-St. Petersburg-Clearwater and Miami;

b. Grant Delta Air Lines, Inc. authority to serve Indianapolis, Louisville, Orlando, Tampa-St. Petersburg-Clearwater and West Palm Beach on Route 54, and extend Route 54 from Cincinnati to Dayton, Columbus, Toledo and Detroit; and

c. Grant Capital Airlines, Inc., an extension of Route 51 from Atlanta to Florida, and from Pittsburgh to Buffalo.

By the Civil Aeronautics Board:

/s/ Mabel McCart, Acting Secretary. (Seal.)

BEFORE THE CIVIL AERONAUTICS BOARD

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 5th day of December, 1958

ORDER No. E-13245 DISSOLVING STAY—December 5, 1958

By our Order E-13190 we stayed the effectiveness of various certificates of public convenience and necessity issued by Order E-13024 to Northwest Airlines, Inc., Delta Air Lines, Inc., and Capital Airlines, Inc., to and including December 6, 1958, so that the United States Court of Appeals for the Second Circuit might have opportunity to rule upon petitions for stay of those certificates. On December 4, 1958 the Court of Appeals denied such petitions.

[fols. 1595-1606] Accordingly, It is Ordered That the stay imposed by our Order E-13190 be and it hereby is dissolved.

By the Civil Aeronautics Board:

/s/ Mabel McCart, Acting Secretary. (Seal.)

[fol. 1607] BEFORE THE CIVIL AERONAUTICS BOARD

ORDER No. E-14224 DENYING PETITIONS FOR RECONSIDERATION AND FOR STAY

Delta Air Lines, Inc. (Delta), has filed a petition for reconsideration of Order No. E-13835, May 7, 1959, insofar as pursuant to that order the Board issued Delta an amended certificate of public convenience and necessity for route No. 54 imposing certain long-haul restrictions on Delta's services between pairs of points newly authorized

for service on route No. 54 pursuant to our decision in this case.[1]

Delta's motion for stay of the effectiveness of the certificate condition insofar as it requires flights serving Chicago and Indianapolis to originate or terminate at Atlanta or a point south thereof was denied by Order No. E-14044, June 16, 1959.

The addition of Indianapolis, Louisville, and Dayton to Delta's route No. 54 without certificate restriction would have permitted the carrier to provide turnaround services between these new points and certain points previously authorized for service on route No. 54, services which we [fol. 1608] concluded should not be authorized now. We, accordingly, added condition (8) to Delta's certificate and deferred action on Delta's application for unrestricted authority in the markets involved for contemporaneous decision with the *Great Lakes Local Service Investigation*, Docket No. 4251 *et al.*, the proceeding in which we will consider carrier applications to provide essentially local service in the Great Lakes area.

In its petition for reconsideration, Delta alleges that although our order indicated that the imposition of condition (8) was limited, that the condition is not limited in time in the amended certificate issued to the carrier. Delta therefore asks the Board to modify its certificate for route No. 54 to note that condition (8) shall be effective only until 60 days after our decision in the *Great Lakes Local Service Case*. Delta also questions our power to add condition (8) pursuant to our opinion on reconsideration in view of the fact that the original amended certificate issued to Delta in this case authorizing unrestricted service between Indian-

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[1] The specific certificate condition in question, condition (8), provides as follows:

"(8) Flights scheduled to serve any of the following pairs of points shall originate or terminate at Atlanta, Ga., or a point south thereof:

Indianapolis, Ind.-Chicago, Ill.	Indianapolis, Ind.-Cincinnati, Ohio
Indianapolis, Ind.-Louisville, Ky.	Indianapolis, Ind.-Lexington, Ky.
Indianapolis, Ind.-Asheville, N. C.	Dayton, Ohio-Lexington, Ky.
Dayton, Ohio-Asheville, N. C.	Cincinnati, Ohio-Louisville, Ky.
Louisville, Ky.-Lexington, Ky.	Louisville, Ky.-Asheville, N. C."

apolis, Louisville, and Dayton, on the one hand, and certain other route No. 54 points, on the other hand, had become effective.

Delta has also filed a petition for stay of the effectiveness [fol. 1609] of Order No. E-13835 insofar as it imposes the long-haul condition in question, pending disposition by the Court of Appeals of the carrier's petition for judicial review of the Board's action in adding condition (8). An answer to the petition for stay has been filed by Lake Central. In the petition for stay, Delta again asserts its view that imposition of the condition was illegal and requests expeditious action on the petition, since the Board's denial of its partial stay motion as to Chicago-Indianapolis flights, places the carrier in present violation of its certificate.[2]

Upon consideration of the foregoing, the Board concludes that Delta's petitions should be denied. Insofar as Delta's petition for reconsideration is concerned, we believe Order No. E-13835 makes clear that we are not now deciding whether condition (8) should be retained after our decision in the *Great Lakes Local Service Case* and that our resolution of that question is deferred for later consideration. The reasons for such deferral are clearly set forth in Order No. E-13835, previously mentioned. The fact that the new condition does not bear a specific expiration date does not affect our specifically stated reservation that final decision on whether the condition will be retained or removed is deferred for later consideration. We therefore see no purpose to be served by indicating in the certificate itself that final decision on certain aspects of Delta's application consolidated with the present case has been deferred and we have not followed that practice in similar instances in the past.

In the light of the foregoing discussion, we see no basis for granting Delta's petition for stay. Insofar as the carrier challenges our power to impose condition (8) because its amended certificate authorizing unrestricted service between the particular pairs of points in question had

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[2] The carrier is still providing service to Chicago and Indianapolis on flights which do not originate or terminate at Atlanta or a point south thereof.

become effective, we believe we have such power, and we have exercised it in the past. Moreover, there is no showing, and we are unable to conclude, that any significant adverse effect will result to either Delta or the public from [fol. 1610] observance of the conditions here involved.

Accordingly, It is Ordered: That Delta's petition for reconsideration of Order No. E-13835 and petition for stay be and they hereby are denied.

By the Civil Aeronautics Board:

/s/ Mabel McCart, Acting Secretary. (Seal.)

[fol. 1611] In United States Court of Appeals for the Second Circuit, October Term, 1959

No. 248

Argued March 30, 1960

Docket No. 25852

Delta Air Lines, Inc., Petitioner,

v.

Civil Aeronautics Board, Respondent,

Lake Central Airlines, Inc., et al., Intervenors

Before Waterman and Moore, Circuit Judges, and Smith, District Judge

Petition to review various orders of the Civil Aeronautics Board imposing restrictions upon petitioner's effective certificate in the course of the Board's disposition of intervenors' timely-filed petitions for reconsideration. Orders set aside.

Opinion—June 29, 1960

R. S. Maurer, James W. Callison (Frank F. Rox, of counsel), Atlanta, Georgia, Legal Division, Delta Air Lines, Inc., for Petitioner.

[fol. 1612] Robert A. Bicks, Acting Asst. Attorney Gen-

eral; Richard A. Solomon, Atty., Department of Justice; Franklin M. Stone, General Counsel, Civil Aeronautics Board; John H. Wanner, Deputy General Counsel; O. D. Ozment, Assoc. General Counsel, Litigation and Research; Morris Chertkov, Attorney, Civil Aeronautics Board, for Respondent.

Albert F. Grisard, Washington, D. C., for Intervenor, Lake Central Airlines, Inc.

WATERMAN, Circuit Judge:

Petitioner is a certificated trunk-line air carrier possessing routes that, in the main, run from the mid-west to the southeast quarter of the country. The present controversy arises out of the Board's area proceeding known as the "Great Lakes-Southeast Service Case." Other aspects of this same area proceeding were recently before this court in *Eastern Air Lines* v. *CAB*, 271 F. 2d 752 (2 Cir. 1959), *cert denied*, 362 U. S. 970. For a general description of this "area proceeding" and for a statement of the air transportation the Board had under consideration in the "Great Lakes-Southeast Service Case" we refer to our opinion in *Eastern Air Lines* v. *CAB*, *supra*.

In its decision and order in the above area proceeding, Order No. E-13024 of September 30, 1958, the Board added six cities to Delta's pre-existing Route 54, which prior to that time served Chicago and Miami with certain intermediate points, but bypassed Indianapolis. The addition to Delta's authority of the three cities of Columbus, Toledo, and Detroit permitted Delta for the first time to offer service between Miami and Detroit, and for that reason this authority extension was important to the issues pre-
[fol. 1613] sented to this court in *Eastern Air Lines* v. *CAB*, *supra*, but it has no bearing on the question now before us. The addition of the three cities of Dayton, Louisville, and Indianapolis permitted Delta for the first time to offer service between these cities and the other cities which lay on its Route 54. Since Indianapolis already was an authorized intermediate point on Delta's Route 8 between New Orleans and Detroit, the inclusion of Indianapolis as an intermediate point on Route 54 had the additional effect, which the Board recognized and approved, of permitting Delta on the same flight, provided that the flight stopped at

Indianapolis, to serve cities on both of these routes.[1] By the Board's September 30 order Delta's new certificate, incorporating this additional authority, was to become effective in November 29, with the proviso that prior thereto the Board might extend that effective date upon its own initiative or upon a petition for reconsideration of the Board's September 30 order. The new certificates of other carriers who had received new authorizations under the "Great Lakes-Southeast Service" decision had the same effective date and were subject to the same proviso.

Numerous petitions for reconsideration were indeed filed. Included among these were petitions by Lake Central Airlines, Inc. and Piedmont Aviation, Inc., two local service carriers. The new route applications of all local service carriers had been excluded by the Board from the "Great Lakes-Southeast Service Case," the Board stating that it would consider them later in a separate proceeding. The local service carriers, however, were permitted to intervene to present evidence as to the effect that an award to [fol. 1614] a trunkline carrier might have upon the local service carriers' present or contemplated operations. In their petitions for reconsideration Lake Central and Piedmont sought, *inter alia*, to have restrictions imposed on Delta's service between ten pairs of cities[2] which, as a result of the addition of Indianapolis, Louisville and Dayton to Route 54, Delta would be able to serve without restriction under the certificate authorized by the Board's September 30 decision. Lake Central's petition contained a

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[1] Unless the Board imposes "restrictions" a carrier may operate flights between any combination of authorized points on a given linear route. Similarly, absent restrictions, when two routes of a carrier have a common point, the carrier may operate flights between any combination of points on the two routes via the commmon point.

[2] The ten pairs of cities are:

Indianapolis, Ind.-Chicago, Ill.; Indianapolis, Ind.-Cincinnati, Ohio; Indianapolis, Ind.-Louisville, Ky.; Indianapolis. Ind.-Lexington, Ky.; Indianapolis, Ind.-Asheville, N.C.; Dayton, Ohio-Lexington, Ky.; Dayton, Ohio-Asheville, N. C.; Cincinnati, Ohio-Louisville, Ky.; Louisville, Ky.-Lexington, Ky.; Louisville, Ky.-Asheville, N. C.

request to stay the effective date of Delta's certificate. By order No. E-13190, dated November 21, the Board stayed the effectiveness of Delta's certificate for the period to and including December 6, for the convenience of this court in considering Eastern's request for a judicial stay. Two other certificates were also stayed for this reason. On November 28, 1958 the Board issued Order No. E-13211, which, with one exception,[3] refused to stay the effective date of any new certificate beyond December 7. The Board assigned two interrelated reasons for its refusal to grant further stays. First, the Board found that the various reconsideration petitions did not make sufficient showings of probable legal error or abuse of discretion. Second, the [fol. 1615] Board wished to have the new services inaugurated in time for the peak period of winter travel. The Board's opinion in Order No. E-13211 closed with the statement that the order was not a disposition of the several petitions for reconsideration on their merits.[4]

On December 4 this court denied Eastern's request for a judicial stay, and, in recognition thereof, on December 5 the Board by Order No. E-13245 dissolved the stay imposed by Order No. E-13190. Accordingly on December 5, 1958, Delta's certificate became effective. On January 1, 1959, pursuant to schedules filed with the Board, Delta inaugurated service between Chicago and Indianapolis, with flights continuing beyond Indianapolis southward to Evansville, Indiana, a city Delta was authorized to service on its previously established Route 8.

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[3] The exception was the certificate of Eastern Air Lines. Piedmont, in its petition for reconsideration, in addition to seeking to have restrictions imposed on Delta's service between the pairs of cities set forth in footnote 2, *supra*, sought to prevent the extension of Eastern's Route 6 from Charleston, W. Va. to Chicago. In its opinion accompanying Order No. E-13211, the Board held that Piedmont's objections to Eastern's additional authorization raised serious questions; and accordingly it stayed the effective date of Eastern's new certificate until further action by the Board.

[4] The opinion stated: "Nothing in the present order forecloses the Board from full and complete consideration of the pending petitions for reconsideration on their merits."

On May 7, 1959 the Board issued the order here complained of, Order No. E-13835.[5] This order constituted the Board's formal disposition of the various petitions for its reconsideration of the September 30 decision. This order modified the former decision. One modification was that restrictions were imposed on Delta's service between the ten pairs of cities set forth in footnote 2, *supra*, so that a Delta flight serving any of the pairs of cities was required to originate at Atlanta or at a point on Route 54 south thereof.[6] One effect of the restrictions was to forbid the service Delta had inaugurated between Evansville and Chi- [fol. 1616] cago via Indianapolis unless that flight began at Atlanta and proceeded on a circuitous routing through Memphis.

The issue here is whether, on the above facts, the Board had power to alter Delta's certificate without resort to a modification proceeding under Section 401(g) of the Act, 49 U. S. C. 1371(g).[7] It is the Board's contention that it may modify a certificate subsequent to the effective date of the certificate in the course of passing upon timely filed petitions for reconsideration of the award contained therein; and that the proceedings provided for in Section 401(g) only need to be followed after the Board has finally disposed of these petitions for reconsideration. We disagree.

Section 401(f), relating to the effective date and dura-

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[5] Delta's petition also encompasses Order No. E-14044 denying Delta's motion for a partial stay in order to permit the continuance of the Evansville-Indianapolis-Chicago service, and Order No. 1-14224 denying Delta's petition for a stay pending judicial review.

[6] The Board indicated that the advisability of these restrictions would be considered anew in the later local service carrier area proceeding.

[7] Between the time of the Board's initial action and the modification on reconsideration, the Civil Aeronautics Act (52 Satt. 973, 49U. S. C. 401), was supplanted by the Federal Aviation Act (72 Stat. 731, 494 U.S.C. 1301). The The provisions of the former Act here involved were reenacted without change, and there is admittedly no issue here stemming from the supplantation of the Civil Aeronautics Act.

tion of an air carrier's certificate of public convenience and necessity provides as follows: "Each certificate shall be effective from the date specified therein, and *shall continue in effect until suspended or revoked as hereinafter provided* * * *"[8] (Italics supplied.) The phrase "as hereinafter provided" would appear to require our rejection of the Board's argument that it has some form of implied power to alter the authority conferred in an effective certificate. Section 401(g) is the only section of the Act expressly dealing with the modification of certificates. The Board maintains that power to modify an effective certifi- [fol. 1617] cate can be found in Section 204(a), 49 U. S. C. 1324(a), but this argument is almost identical to the position taken by the Interstate Commerce Commission in *United States* v. *Seatrain Lines*, 329 U. S. 424 (1947), and there rejected by the Supreme Court, *supra*, at pp. 432-33. This holding of the Supreme Court in *Seatrain* is likewise fully dispositive of any Board reliance upon Section 1005(d), 49 U.S.C. 1485(d) as express statutory support for its position.

Save for the exceptions in Section 401(f) set forth in footnote 8, *supra*, Sections 401(f) and 401(g) are patterned very closely upon Section 212(a) of Part II of the Interstate Commerce Act, 49 U. S. C. §312(a). In *Smith Bros., Revocation of Certificate*, 33 MCC 465, 472 (1942), the Interstate Commerce Commission in construing Section 212(a) announced the following principle: "We may issue decision upon decision, and order upon order, on an application for a certificate so long as sufficient reason therefor appears and until all controversy is determined, but once a certificate, duly and regularly issued, becomes effective, our authority to terminate it is expressly marked off and limited." The Board makes a futile effort to

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[8] Section 401(f) states three exceptions, none here applicable, to the above rule. A certificate conferring temporary authority ceases to be effective upon the expiration of its term; a certificate will cease to be effective if the Board certifies that operations under the certificate have ceased; and if the carrier fails to inaugurate service authorized by a certificate within ninety days of the date of authorization, the Board upon notice and hearing may revoke the unused authority.

distinguish the *Smith Bros.* case on the ground that a revocation of a certificate is more closely circumscribed by statute than a certificate's modification. Under both Sections 212(a) of Part II of the Interstate Commerce Act and Section 401(g) of the Federal Aviation Act modification differs from revocation only as to the matters the Commission or Board must demonstrate *once a proper proceeding has been instituted.* The statutory requirement to institute a proceeding is the same whether the certificate is to be modified or revoked. The *Smith Bros.* case has been frequently cited with apparent approval in the Supreme Court and other federal courts. We follow it, believing its principle to be as applicable [fol. 1618] to the Federal Aviation Act as to Part II of the Interstate Commerce Act.

It is true that in cases involving motor carriers under Part II of the Interstate Commerce Act the Supreme Court has held that, under certain closely-defined circumstances, an effective certificate may be modified by the Commission without resort to a formal proceeding under Section 212(a). For instance, in *American Trucking Ass'n* v. *Frisco Transp. Co.*, 358 U. S. 133, 146 (1958) the Supreme Court held that the Commission may so rectify "inadvertent ministerial errors." In the present case there is no suggestion that Delta's certificate inadvertently contained greater authority than the Board intended to confer by its September 30 order. Moreover, it is affirmatively clear that when the Board refused on November 28, 1958 to stay the effective date of Delta's certificate it was fully aware of the arguments which subsequently led it on May 7, 1959 to impose the restrictions here complained of.[9] Indeed, for this reason, the present case is similar to *Watson Bros. Transp. Co.* v. *United States*, 132 F. Supp. 905 (D. Neb. 1955), *aff'd*, 350 U. S. 927 (1956), where the three-judge district court concluded on the facts present there that the modification of a motor carrier's certificate had resulted from a change in administrative policy, and therefore held that the change was beyond the Interstate Commerce Commission's power. In any event, the present case is clearly distinguishable from the

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[9] See footnote 3, *supra.*

case of *United States* v. *Rock Island Motor Transit Co.*, 340 U. S. 419 (71 S. Ct. 382) (1951), *rehearing denied*, 341 U. S. 906, where the Supreme Court held that the Commission had power, apart from a proceeding under Section 212(a), to impose specific restrictions to implement an already existing but somewhat generally-phrased restriction on the type of service the carrier was certificated [fol. 1619] to perform. We are of the opinion that the imposition of a restriction on service under a certificate that previously had authorized the service without any restriction presents an entirely different matter than that before the Court in *Rock Island Motor Transit*.

The Board, seeking to justify its act here on the basis of past performance, informs us that, in the past, upon a petition for rehearing, it has modified a certificate it had allowed to become effective.[10] However, on at least one other occasion it expressed grave doubt as to its statutory power to do so. *Kansas City-Memphis-Florida Case*, 9 CAB 401, 408-09 (1948). Moreover, the Board has represented to at least one court that it has been its practice to stay the effective date of a certificate in order to permit it time to consider the merits of reconsideration petitions. *Southwest Airways* v. *CAB*, 196 F. 2d 937, 938 (9 Cir. 1952).[11] We do not find that the Board in this

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[10] *Cincinnati-New York Additional Service*, 8 CAB 603, 604 (1947) seems to be the clearest example.

[11] *Western Air Lines* v. *CAB*, 194 F. 2d 211 (9 Cir. 1952) involved a Board procedure entirely different from that in the present case. In *Western Air Lines* the Board, subsequent to the effective date of its order *approving the transfer* of a certificate, imposed labor protective conditions upon the transfer. The Board's power relative to the transfer of certificates is governed by Section 401(h), 49 U. S. C. §1371(h) rather than Sections 401(f) and 401(g). Under Part II of the Interstate Commerce Act, the Supreme Court has stated that the Commission's power to amend an order approving the transfer of a certificate is more flexible than its power to amend a certificate. *United States* v. *Rock Island Motor Transit Co.*, 340 U. S. 419, 445-46 (1951), *rehearing denied*, 341 U. S. 906. In addition, *Western Air Lines* involved misrepresentation in

particular can rely upon a consistent administrative interpretation of its statutory powers similar to the consistent [fol. 1620] interpretation found in *United States* v. *Leslie Salt Co.*, 350 U. S. 383, 396 (1956).

Finally, the Board argues that unless we uphold its position that resort to 401(g) of the Act is unnecessary it will be confronted with a dilemma in the management of its large-scale area proceedings. In its brief the Board states: "Moreover, Delta's concept, if adopted, would be prejudicial both to the traveling public and the carriers, for in some cases it could only result either in a hasty and largely meaningless passing on reconsideration requests of a highly technical economic nature, or the further postponement of the effective dates of certificates with the attendant deprivation of needed public service and additional carrier revenues, on the small chance that a further review will result in a change of the original decision." We admit the Board's dilemma is real [12] but we find that this dilemma is inherent in the statutory scheme of Sections 401(f) and 401(g). It is our view that once a certificate has become effective, the Act requires that the Board resort to more formal—even though possibly more time-consuming—procedures to modify such a certificate, irrespective of whether the modification is entirely in the public interest.

Our holding is not based upon the fact that, prior to the date on which the certificate was modified, Delta inaugurated service authorized by the certificate. Furthermore, we have accepted, *arguendo*, the Board's argument that the language in the order quoted in footnote 4, *supra*, put Delta on notice that the Board purported to reserve to itself power to modify the certificate on the basis of matters set forth in the filed petitions for reconsideration.

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testimony before the Board. There is language in *Smith Bros., Revocation of Certificate*, 33 MCC 465 (1942) indicating that if a certificate has been obtained as a result of misrepresentation it may be revoked without a formal proceeding under Section 212(a), 49 U. S. C. §312(a).

[12] We suggest, however, that the Board investigate the possibility of issuing some form of temporary authorization.

We hold that under Sections 401(f) and 401(g) of the Federal Aviation Act, absent fraud, misrepresentation or [fol. 1621] clerical error in the original issuance of the certificate, it is only in a proceeding satisfying the requirements of Section 401(g) that an effective certificate authorizing unrestricted service may be modified by subsequently imposed restrictions.

Orders No. E-13835, E-14044, and E-14224 are set aside to the extent that they impose restrictions on the certificate of Delta Air Lines, Inc., which became effective on December 5, 1958.

[fol. 1622] IN UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1959

No. 248

DELTA AIR LINES, INC., Petitioner,

v.

CIVIL AERONAUTICS BOARD, Respondent,

LAKE CENTRAL AIRLINES, INC., et al., Intervenors

JUDGMENT AND DECREE—July 21, 1960

This cause having come on for hearing on the transcript of the record from the Civil Aeronautics Board, and the Court, upon consideration of the record, briefs and arguments of Counsel, having filed its opinion herein on June 29, 1960, it is

Ordered, Adjudged and Decreed that the orders of the Civil Aeronautics Board of which review is sought in this case be, and they hereby are, set aside to the extent that they impose restrictions on the certificate of Delta Air Lines, Inc., which became effective on December 5, 1958.

Steven R. Waterman, Leonard P. Moore, J. Joseph Smith, U.S. District Judge.

Dated: July 21, 1960.

[fol. 1623] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1624] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

No. 492

CIVIL AERONAUTICS BOARD, Petitioner,

vs.

DELTA AIR LINES, INC.

ORDER ALLOWING CERTIORARI—December 12, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1625] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1960

No. 493

LAKE CENTRAL AIRLINES, INC., Petitioner,

vs.

DELTA AIR LINES, INC.

ORDER ALLOWING CERTIORARI—December 12, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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